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JAMES H. McKENNEY,
Clerk.

IN THE

United States Circuit Court of Appeals,

THIRD CIRCUIT,

No. , MARCH TERM, 1900.

CHRISTIAN SCHWARTZ, a citizen of the State of West Virginia, ANTONY KOTERBA, DAVID STROHAKER and ALLEN SHALE, citizens of the State of Ohio, and G. L. SHALE, a citizen of South Dakota,

vs.

JOHN S. DUSS, GOTTLIEB RIETHMUELLER, FRANZ GILLMAN, CONRAD HERMANSDOERFER, EDWARD KELLERMAN, JOHANNA HERMANSDOERFER, SUSIE C. DUSS, KAROLINE MOLT, KATRINA NAGEL, ELIZABETH BECK, MARIA DIEM, BARBARA BOEH, FREDERICKA MUNTZ, DOROTHEA HOEHR, REGINA LAUTENSCHLAGER, CHRISTIAN RALL, HENRY HICE and JOHN REEVES, citizens of the State of Pennsylvania, and THE UNION COMPANY, a corporation, citizen of the State of Pennsylvania.

BRIEF OF THE APPELLEES.

CHARLES S. FETTERMAN,
JOHNS McCLEAVE,
D. T. WATSON,
Solicitors for Appellees.

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ERRATA.

"Record, vol. IV," in references to pages of testimony should be read "Record, vol. III."

STATEMENT OF THE CASE.

The plaintiffs below, appellants here, seek, in this suit, to recover a portion of the property of the Harmony Society. They claim this, *not* because of any direct property interest either pretends to have, nor because either was a member of said society, but because, as they allege, their ancestors, in

more or less remote degrees of consanguinity or affinity, at some period long past, *were* members, and *either* left the society or died while still members, and because, as appellants now claim, the society is dissolved and has been abandoned, and hence they argue, in the general distribution of its property, we are each, on account of our ancestors, entitled to a share.

Thus, two main questions arise:

(1) Is either one of the appellants a part owner in the property of the Harmony Society and entitled to any interest therein even if the society was dissolved?

(2) Has the Harmony Society been dissolved?

In the master's report and the opinion of the court below each of these questions was taken up and discussed as a mixed question of fact and law, and the facts and the law on each were found against the appellants and in favor of the appellees.

The master found all of the material questions in the case against the appellants, and the court below approved, after full argument, of these findings.

To the master's conclusions and findings, the appellants filed in the Circuit Court fifty-one (51) exceptions. The court overruled all of them and entered a decree dismissing the bill, from which the appellants appealed, and filed forty-eight (48) assignments of error.

We believe this court will find it more convenient, and we will be the better able to present our views with simplicity and directness if we take up each question separately and fol-

low the master and court below in that direction, instead of taking up seriatim the assignments of error filed by appellants. We can thus more speedily present our case and assure the court of a plain statement of what we claim both as to facts and law connectedly on each question, and, at the same time, answer all said assignments of error.

BRIEF SKETCH OF THE HARMONY SOCIETY.

In 1804 and 1805, George Rapp and certain of his followers left the kingdom of Wurtemberg and came to the United States. They settled first in Harmony, Butler County, Pennsylvania, then moved to Wabash, Indiana, and came to Economy, in Beaver County, Pennsylvania, in the year 1825.

In the year 1805 they organized the Harmony Society by a written agreement bearing that date, which is in evidence. This written agreement was followed by another agreement made by the society in 1827; by another one in 1836; by another one in 1847; and by subsequent ones in 1890 and 1892; and in addition there was another written agreement in 1821. All of these agreements, except that of 1821, are in evidence, and are analyzed in a subsequent part of this brief.

Prior to 1847, the property of the society and its external business was in the hands of a general agent. Frederick Rapp, up until his death, held that position, and at his death, in 1834, George Rapp was appointed to take his place. The society did carry on agricultural pursuits, but, at the same time, largely engaged in many other enterprises, such as saw mills, distilleries, glass plants, etc., etc.

In 1827, the written agreement stated that the society was based on Christian fellowship, and that that fellowship included the patriarchal government and the community of goods adopted in the days of the Apostles, and also stated that the sole aim of the society was to approximate to the fulfillment of the will of God by the practice and observance of those affections and virtues which are essential to man's happiness here and hereafter.

From 1825 the possessions of the society increased largely, but in 1832 what was known as the Count De Leon conspiracy took place, which resulted in a division of the society and a distribution of a part of its assets. The agreement showing this division and distribution is dated March 6, 1832, is in evidence as Exhibit No. 82, on pp. 606, *et seg.*, Record, vol. IV., and is signed by all those then comprising the Harmony Society.

From 1832 down until 1890, the *bill* in this case avers that peace and prosperity attended the society.

That there was this long period of prosperity during which the society

> "had rigidly adhered to its plan of government"

and had become

> "illustrious and highly respected."

That it had advocated the equality of man; had espoused the highest principals of Christianity; that its administration had been honest and benevolent, and this, whether in its internal affairs or in

> "its many transactions with the citizens of Western Pennsylvania."

ALLEGATION OF PLAINTIFFS' BILL.

The bill then alleges that, in 1890, certain schemes were set on foot to wreck the society, and states those schemes to have been as follows:

(1) John S. Duss and others conspired to introduce Cyrus Teed and others into the Harmony Society, for the purpose of controlling the society, the result of which has overthrown and destroyed the government of the society, wasted its wealth, depleted its numbers, and placed the management of the society in his own hands. That prior to his joining the society, Duss was the friend and confederate of Cyrus Teed.

Yet the bill admits that this conspiracy was overthfown by the protestations of a number of members of the Harmony Society, and that after a failure of this conspiracy Duss abandoned it, but began a new conspiracy.

See paragraphs 10, 11, 12, of the bill.

(2) The new conspiracy is stated in paragraphs 14, 15, 16, 17, 18, 19, of the bill, and the purpose of it was to wreck and dismember the society, and attain for himself and confederates the entire assets of the society.

A step in this conspiracy was an agreement with Judge Hice and Reeves to use the money of the Harmony Society to pay the debts of the Economy Savings Bank; the borrowing of $400,000, and giving of the Darlington Mortgage on all the real estate of the Harmony Society to secure its payment; the

borrowing of $100,000, secured by a second mortgage on the same property; the sale of valuable dividend paying stocks in bridge companies, water companies, railroad companies, and other valuable corporations, by artifice and fraud securing most of the members to withdraw; and, paragraph 21st, by threats and intimidation inducing others to do so.

Paragraph 20 alleges the sale to the Union Company of the Economy land, but whether as part of this general conspiracy is not stated.

Paragraph 22d alleges that Duss is selling liquor without license, and 23d, that the principle of equality in the Harmony Society is no longer recognized or maintained. The 24th contains the charges as to Fredericka Kroll.

DISSOLUTION OF SOCIETY.

The averments in the bill as to the dissolution of the Harmony Society:

Paragraph 3rd, the words are:

> "which has become dissolved as hereinafter stated."

Paragraph 25th:

> "That recently said Harmony Society has become dissolved as aforesaid, that all of its purposes and practices established as aforesaid by the founders of

said society, and by the ancestors of your orator, have been abandoned, * * * and that by reason of the facts hereinbefore set forth, your orators and the said last members, except the said Duss and wife, are now tenants in common of all said lands and tenements, and entitled to partition thereof in proportion to their respective interests."

Paragraph 26th:

"* * * that by common consent this association has ceased to exist as an association, and that if the property thereof has ever been impressed with a trust, (which your orators deny as being contrary to public policy, and void in law and equity), such trust has wholly ceased, and the assets of such dissolved association have reverted to the donors thereof, among whom were the ancestors and intestates of your orators, as hereinbefore fully set forth."

THE PRAYERS OF THE BILL ARE AS FOLLOWS:

(1) A receiver;

(2) Injunction to prevent the selling of property;

(3) Discovery of the accounts, liabilities, debts and assets;

(4) That the Union Company be restrained from disposing of any portion of the property conveyed to it by the trustees;

(5) That the deed by the trustees to the Union Company be declared fraudulent and void, and surrendered up to be cancelled;

(6) That an account be stated against Duss for the losses that have been sustained through his fraud and mismanagement;

(7) The marshalling of the assets, and a winding up of the affairs of the Harmony Society, and a division and dis-

tribution of the assets, real and personal, either by sale or partition, to and among the parties legally and equitably entitled thereto, including the plaintiffs, and that each may receive his share in severalty;

(8) Other relief;

(9) Subpœna.

ISSUES RAISED.

The answer, in all material points, flatly contradicted the averments of the bill. It denied all manner of fraud and improper conduct of any kind; it denied all charges of conspiracy; denied that any one of the plaintiffs had any interest in the property of the company, and averred that the society was not dissolved, but in full life and vigor.

It is clear that in order to entitle the plaintiffs to a decree for an account as prayed for in the bill they must prove :

(1) That the plaintiffs owned in part, or had property rights in, the real and personal estate of the Harmony Society as it at present exists, or did exist when the bill was filed, and has the present right of possession to a share of the said property.

(2) That the Harmony Society has been dissolved;

(*a*) By common consent of its members; or,

(*b*) By the abandonment of the purposes for which it was founded.

MASTER AND COURT BELOW.

The court below, upon request, and upon the written agreement of counsel on both sides, appointed a master to take testimony, find the facts, and report the same, and his opinion on the law of the case to the court, giving to either side the right to except thereto.

The master took 2,907 pages of testimony (type-written), and there were in the case 96 exhibits.

After an elaborate argument, in which each side was allowed days to discuss their respective views of the case, and after the master had elaborately considered all of the testimony, he filed a written report, in which he found all the material facts and all the material questions of law against the plaintiffs, and recommended that the bill be dismissed.

To this report the appellants filed in court fifty-one (51) exceptions, and, again, after a most liberal allowance of time for the oral discussion of the same, the court below (Judge Acheson) overruled all of the exceptions, approved all of the findings of the master, and made a decree dismissing the bill.

We, especially, ask the attention of this court to the findings of fact and the opinion of the master.

Every question in the case, great or small, was most carefully and elaborately examined. The report is well written,

carefully considered, contains a full citation of authorities, and indeed is a remarkable document.

The court below (Judge Acheson) regarded it as his duty to read, and he did read, all the evidence in the case, and his opinion discussed quite fully the salient points. He confirmed the master in every respect, and to his opinion, also, we respectfully refer.

EFFECT OF THE FINDING OF FACTS BY THE MASTER AND COURT BELOW.

In so far as the report of the master and the opinion of the court find facts they are considered as conclusive in this court unless plain error be unmistakably shown from the great preponderance of evidence in the case.

Metropolitan Bank vs. Rogers, 53 *Federal Rptr.*, 776.
Kimberly vs. Armes, 129 *U. S.*, 525.
Dravo vs. Fahil, 132 *U. S.*, 487.

THE FIRST QUESTION.

The assignments of error, although forty-eight (48) in number, can the more readily be grouped as raising but the two questions hereinbefore stated:

(1) The property interest of the appellants.

(2) The dissolution of the Harmony Society.

We take up, then, the first question, which we state as follows:

(1) IS EITHER ONE OF THE PLAINTIFFS A PART OWNER IN THE PROPERTY, REAL OR PERSONAL, OF THE HARMONY SOCIETY, AND IF THE SOCIETY WAS NOW DISSOLVED WOULD EITHER BE DECREED A PART THEREOF?

The answer specifically asserts that no one of them is a part owner, and that even if the society was dissolved no one of the appellants could participate in the dissolution of its property. (See paragraphs six [6] and twenty-eight [28] of the answer.)

(*a*) No one of the plaintiffs seriously alleges that he is a member of the Harmony Society, or that he ever was a member. The master and court below found that no one of them ever was a member. The appellants did not below, nor do they here, specifically assign error to such finding. For the convenience, however, of this court, if it desires to examine the question, we refer, briefly, to the testimony.

Christian Schwartz did testify (pages 2427 and 2428 of type-written testimony) that he had intended to join the society on February 15, 1845, the Feast Day, but was unable to be present. That Father Rapp sent him in the night the Lord's Supper, which was given only to members, and that Father Rapp treated him as a member.

In the first place this testimony is in flat contradiction of this same witness when he was originally called as a witness. He then testified (Record, vol. II., p. 406):

"Q. Did you ever join the Harmony Society?
"A. *No, sir; I never became a member.*
"Q. You left Economy in 1846?
"A. Yes, sir."

The testimony is insufficient to prove membership. The evidence all agrees that no person could join the society without first signing the Constitution.

Fredericka Muntz, pages 1399, 2803, 2805 of type-written testimony; Record, vol. IV., p. 385.

John S. Duss, page 2482 of type-written testimony.

The allegation that Father Rapp treated him as a member proves nothing as to membership, because Father Rapp did not have the power, by his merely treating a person as a member, to thereby create or make him such.

If he had such power, where is the proof of it?

Fredericka Muntz, who then was a member of the Harmony Society, testifies (page 2803 of type-written testimony; Record, vol. IV., p. 385) that Schwartz was not a member, nor was he treated as such.

In the bill the plaintiffs do not allege that Christian Schwartz was a member of the Harmony Society, but do allege (paragraph 3), that he went into the society in 1823, when three years old, and this, Schwartz explained in his testimony, was when his father and mother moved to Economy. Schwartz does not pretend *this* made him a member of the society, but his receiving the sacrament when he became of age in 1845.

(*B*) Each one of the plaintiffs claim a proprietary right or ownership in manner as follows:

(1) *Christian Schwartz.*

He claims through—

(*a*) His father, Christolf, and his mother, Barbara, who joined the Harmony Society, he thinks, in 1826 or 1827. The father died at Economy, still a member, in 1858; and his mother at Economy, still a member, in 1857.

They signed the agreement of 1827, Ex. No. 18, page 35.

The agreement of 1836, Ex. 18, page 49.

The agreement of 1847, Ex. 18, page 90.

See evidence of Christian Schwartz, Record, vol. II., pp. 824, 825, 826, 827.

See also, offers and admissions of plaintiffs, Record, vol. II., pp. 601, 602.

It is presumed that Exhibit 18 proves itself, and this evidence of signatures was unnecessary.

(*b*) His four sisters, as follows:

Katrina Schwartz: The date of her admission into the Harmony Society is not shown, but she died at Economy in 1888, (Record, vol. III., p. 827)

She signed the agreement of 1836, Ex. 18, page 65.

She signed the agreement of 1847, Ex. 18, page 97.

Fredericka Schwartz: The date of her admission is not shown, but she died at Economy in 1857. Record, vol.III., pp. 827 and 828.

She signed the agreement of 1836, Ex. 18, page 65.

She signed the agreement of 1847, Ex. 18, page 97.

Marie Schwartz: The date of her admission is not shown, but she died at Economy in 1878. Record, vol.III., p. 828.

She signed the agreement of 1836, Ex. 18, page 65.

She signed the agreement of 1847, Ex. 18, page 97.

Louisa Schwartz: The date of her admission is not shown, but she died at Economy in 1888. Record, vol.III., p. 829.

She signed the agreement of 1836, Ex. 18, page 97.

She signed the agreement of 1847, Ex. 18, page 97.

(*c*) His brother,

Joseph Schwartz: The date of his admission is not shown, but he died in 1889 at Economy. Record, vol. III., p. 829.

He signed the agreement of 1836, Ex. 18, page 73.

He signed the agreement of 1847, Ex. 18, page 91.

See on *sisters and brothers following evidence:*

Christian Schwartz, Record, vol. III., pp. 824–831.

Exhibit 18, different pages.

Offer of plaintiffs, page 601, *et seq.*

Joel Schwartz: He never was a member.

See—Fredericka Muntz,

Christian Schwartz.

He did not sign any of the agreements.

(2) *Anthony Koterba:*

He claims through—

(*a*) His father, *Joseph Koterba:* Joseph joined the society, it would seem, some time prior to 1827, and withdrew therefrom on November 13th, 1827, married and had children, and died in the State of Ohio in 1860 (Record, vol. IV., p. 403). He left a will, and issue—three sons and one daughter. Record, vol. IV., pp. 403 and 404.

Joseph signed the agreement of 1827 (page 1031.)

(*b*) *Andreas Koterba:* Does not show when he joined the society, but he died May 25th, 1880, at Economy (page 1032 of type-written testimony, and Record, vol. IV., p. 404).

Andeas signed the agreement of 1827, Ex. 18, page 38.

He signed the agreement of 1836, Ex. 18, page 53.

He signed the agreement of 1847, Ex. 18, page 89.

See testimony as to foregoing:

Anthony Koterba, pages 1031 *et al.* of type-written testimony, and Record, vol. IV., p. 402 *et al.*

See also, admission of plaintiffs and defendant on page 1031 of type-written testimony.

Also, offer of plaintiffs on page 600 *et seq.* of Record, vol. IV.

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(3) *David Strohaker:*

He claims through:

(*a*) Christian Strohaker: His paternal grandfather, who died in Wabash, Indiana, between 1820 and 1825 (p. 2321 of type-written testimony).

There is no evidence that he ever joined the society, unless it be the signature to the agreement of 1805 (page 17).

See also signatures to agreement of 1827, Ex. 18.

(*b*) ——— *Strohaker:* His paternal grandmother, who died in Wabash, Indiana, between 1820 and 1824 (pp. 2321-2322 of type-written testimony).

There is no evidence to show that she ever joined the society, nor does her name appear to any of the agreements.

(*c*) *Matthias Reif:* He was the maternal grandfather, and died in Wabash, Indiana, between 1820 and 1824 (p. 2322 of type-written testimony).

There is no evidence to show that he ever joined the society, unless it be the signature to the agreement of 1805, (see page 7.)

(*d*) *Agnes Reif:* She was his maternal grandmother, who died in Economy (he thinks), in 1832, or 1833, or 1834. (Page 2322 of type-written testimony).

There is no evidence to show that she ever joined the society, nor did she sign any of the agreements.

(*e*) *Christopher Strohaker* and *Marie Reif Strohaker:* The father and mother of David Strohaker. Christopher died in 1867, and Marie died in 1875. David Strohaker, when testifying, said that they went in with their parents in 1805, (page 2325 of type-written testimony); that his father and mother left Economy in 1827, (page 2325); that they were children in 1805, and joined when of age, (page 2326 of type-written testimony); they left in 1827, (page 2327 of type-written testimony).

It seems that they signed the agreement of 1827.

See plaintiffs' offer, Record, vol. IV., p. 600, and Ex. 18.

See also, the agreement of 1805, page 170, as to signature of Christopher Strohaker.

(*f*) *Catharine Strohaker:* She died in Economy in 1865, and was the aunt of David Strohaker, the claimant.

She signed the agreement of 1836, Ex. 18, page 58.

She also signed the agreement of 1847, Ex. 18, page 96.

On page 600 of Record, vol. IV., the plaintiffs offer the agreements of 1827 and 1836, and admit that she signed them, but did not specify the agreement of 1847.

See also the testimony of David Strohaker; pages 1037 *et seq.* and 2320 *et seq.* of type-written testimony.

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(4) *Allan Shale and G. L. Shale:*

They claim through:

(*a*) Their great-grandmother, *Mary Shale*, who died at Harmony, in Butler county, Pennsylvania,

and while the society was in Indiana, and therefore must have been prior to 1824, (p. 2338 of type-written testimony.)

It does not appear that Mary Shale ever signed any of the agreements of the society, nor is there any evidence to show that she ever was a member.

(*b*) Their grandfather, *Lawrence Shale*, who died in 1855. When he joined does not appear, but he seems to have signed the agreement of 1805, and he left the society between 1824 and 1826, and married (page 2339 of type-written testimony).

G. L. Shale is the son of Lawrence Shale (page 2342).

(*c*) *Jacob Shale*, who was the great uncle of the plaintiffs. He died in Economy in the year 1837 (page 2341 of type-written testimony).

He signed the agreement of 1827, Ex. 18, page 13.

See testimony of Allen Shale, page 1047, *et seq.*, and page 2343, *et seq.*, type-written testimony.

When the bill in equity was filed no one of the plaintiffs was or ever had been a member of the society, or in any way

represented the interest of any member of the society. Their only claim was that, respectively, they were heirs at law or next of kin of some deceased member.

CONTRIBUTIONS OF PROPERTY.

No one of the appellants and no one of all their ancestors ever contributed any property whatever to the Harmony Society. Nothing whatever was thus contributed.

The Master has so found, and, after argument, the court below so found.

It is in entire accord with all the evidence.

There is no proof that any of the deceased members, under whom plaintiffs claim, ever contributed any property to the society. The only item of evidence on this is hearsay. It was given by Strohaker. See pages 1041, 1043; *et seq.*, typewritten testimony.

A personal individual right cannot be proved by repute, or pedigree, or hearsay.

Wharton on Evidence, secs. 186, 190, 201, *et seq.*

Even if that evidence was admissable, yet it contained no admission by any one then having the power to bind the society, that any money had been paid by the Strohaker ancestor to the society.

The witness' story is that two men—Witzenman and Baker—called in 1837 or 1838 to collect a note for $300.00, which witness' father had given to the society. The father actually paid the money, and then the witness goes on to say (page 1056, type-written testimony,) mother cried and said,

> "she had to pay for her own money that they had put in there in 1805, from their father's estate. That she had to pay interest on her own money."
>
> "Q. What did Baker say?
> "A. He said, 'If I could change it I would, but I haven't got the power.' I heard him say that."

Mrs. Strohaker was a child in 1805 when it is said her father joined.

This does not prove that then Mrs. Strohaker had put money into the society in 1805. There is no proof that either Baker or Witzenman were then the agents of the society, having power which would make their admission evidence against it

They did not admit anything.

The question of whether any given person joined, or was a a member of, the Harmony Society, or contributed money to it, is not one of pedigree or of reputation, and therefore the traditions or declarations concerning it are not evidence to prove that as a fact it was true.

Wharton's Evidence, secs. 186, 201, *et seq.*

Mima Queen and child vs. Hepburn, 7 *Cranch*, 290.

PLAINTIFFS HAVE NO OTHER RIGHTS THAN AS THE DESCENDENTS OF NON-CONTRIBUTING ANCESTORS.

(II.) It seems perfectly obvious that no one of, or all of, these plaintiffs together can have a higher or greater (even if an equal, which we deny,) right to the property of the society than the respective ancestors through whom they claim.

(*a*) What, then, were the property rights of those ancestors?

(*b*) Did they survive a withdrawal from the society?

(*c*) Did they, on death, pass by descent to the heirs or next of kin, or to the personal representative of the decedent?

All of these questions may the more readily be considered together.

All depend upon the written contracts of the parties.

There is no other testimony of any kind in any way proving how, or upon what terms, or in what manner, the property of the society is held, and what the rights or interests in that property of the members of the Harmony Society are, except the written contracts, commonly called the constitution.

Before any one could join the society he had to sign that constitution, and when he did sign it, it regulated, determined

and controlled his rights of ownership and property rights in the property of the society.

Put in a little different light, the signing of the constitution was indispensable to membership in the society, and by the very act of signing the new member became a party to the written contracts, the provisions of which fixed his rights in and to the common property of the society.

The very agreement which assured him of membership in the society, and gave him whatever his rights of property were, also limited and determined the extent of those rights.

One of the reasons why the agreement of 1827 was made was, quoting its words,

> "that the condition of membership should be clearly understood, and that the *rights* and *privileges* and *duties* of *every individual therein* should be so defined as to prevent mistake or disappointment on the one hand, and contention or disagreement on the other."

The agreement of 1847 provides that:

> "New members when admitted shall subscribe this agreement as the evidence of their membership and of the rights acquired by and the duties imposed upon them."

That agreement reaffirmed the agreements of 1827 and 1836.

The six agreements forming the society.

Turning now to the Constitution, or written contracts of the Harmony Society, we find that they are at least six in number:

That of 1805, at Harmony, Butler County, Pennsylvania.

That of 1827, at Economy, Beaver County, Pennsylvania.

That of 1836, at Economy, Beaver County, Pennsylvania.

That of 1847, at Economy, Beaver County, Pennsylvania.

That of 1890, at Economy, Beaver County, Pennsylvania.

That of 1892, at Economy, Beaver County, Pennsylvania.

A copy of each of these contracts is annexed to this brief.

All of the ancestors of the plaintiffs, who were members of the Harmony Society, executed one or more of these agreements, and as all of these agreements, in substance, contain substantially the same provisions so far as the property of the society and the rights of the members in reference thereto are concerned, it is unnecessary now to refer to the facts hereinbefore given as to what contract each ancestor signed. Each signed one or more, and so far as this case is concerned it is immaterial which because, at least for this portion of the case, all are alike in substance.

AGREEMENT OF 1805.

Beginning with the agreement of 1805 we note it is between

> "the subscribers of the one part, and George Rapp and his associates (or society) of the other part."

The subscribers on their part,

> "and on the part of our heirs and descendants, *deliver up, renounce and remit all our estate and*

. . .

> *property, consisting of cash, land and chattels, or whatever it may be,* to George Rapp and his associates, in Harmony, Butler County, Pennsylvania, *as a free gift or donation,* for the benefit and use of the community there, and bind ourselves on our part, as well as on the part of our heirs and descendants, *to make free renunciation thereof, and to leave the same at the disposal of the superintendents of the community, as if we never had nor possessed it.*"

The language here is plain and precise:

For his part and his heirs and descendants, each subscriber does—

> "deliver up, *renounce* and *remit* all our estate and property * * to George Rapp and his associates (or society), * * *as a free gift or donation for the benefit and use of the community* there, and *bind ourselves on our part,* as well as on the *part of our heirs and descendants, to make free renunciation thereof, and to leave the same at the disposal of the superintendents* of the community, *as if we never had nor possessed it.*"

The donor is bound, and he binds his heirs, to make free renunciation, so that for the future he will be as if he never had or possessed it.

Human language could hardly more clearly declare that each subscriber forever parted with any right to any property of the society—not alone that he himself contributed, but that which *any one or all of them contributed.*

The agreement is *joint.* It is

> "us the subscribers of the one part,"

and

> "George Rapp and his associates (society) of the other part."

It is

> "we the subscribers on our part * * deliver up, renounce and remit."

All of them *renounce*, *deliver up* and *remit* all their property to George Rapp and his associates (society),

"as a free gift or donation."

All bind themselves to make

> "*free renunciation thereof*, and to leave the same at the disposal of the superintendents of the community *as if we never had nor possessed it.*"

It, therefore, comprises all the property which each and all contributed to the society.

The grantees were

"George Rapp and his associates."

Who these associates were the signed agreement would show. That the original is lost, and we do not now know them, does not affect it.

George Rapp is known and certain. The covenant with him is good.

Article Second is joint and several, and is an agreement to submit to the laws of the society and show obedience thereto, and work for the same.

The idea of work and accumulation of property was in this article. Taken in connection with Frederick Rapp as general agent, and his successors, trade and gain and property accumulation was not foreign to but embodied in their agreements.

Article Third is:

> "If contrary to our expectation the case should happen, and we jointly or severally could not stand to it in the community, and we would within a few or more years break our promises and withdraw from

> the community, for whatever cause it may be, *never to demand any reward, either for ourselves or children or those belonging to us, for any of our labors or services rendered, but whatever we jointly and severally shall or may do, we will have all done as a voluntary service for our brethren.*"

This is joint and several.

If any one

> "withdraw from the community *for whatever cause* it may be,"

the one so withdrawing is

> "*never to demand any reward*, either for ourselves or children, or those belonging to us, for any of our labors or services rendered, but whatever we jointly and severally (have done) shall or may do we will have all done *as a voluntary service for our brethren.*"

This, it is to be noticed, is not merely each one's own labor, but it is joint and several—*the labor of all and of each.*

Then follow the covenants and promises which George Rapp and his society makes to the subscribers.

> "In consideration whereof, George Rapp and his associates adopt the subscribers jointly and severally as members of the community, *whereby* each of them obtains the privilege to be present at each religious meeting; not only they themselves, but also their children and families, shall and will receive the same necessary instructions in church and school, which is needful and requisite for their temporal good and welfare as well as eternal felicity."

George Rapp and his society, in consideration of the covenants and promises of the subscribers, do—

> "adopt the subscribers as members of the community, *whereby* each of them obtains the privilege to be present at each religious meeting; not only they themselves, but also their children and families,

> shall and will receive the same necessary instructions in church and school which is needful and requisite for their temporal good and welfare, as well as eternal felicity."

Here is a statement of the effect and consequences of an adoption, and what rights the adopted thereby acquires are specifically stated.

So far the adoption as members insures them and their families attendance at religious meetings, and necessary instructions in church and school, which is needful for their temporal good and eternal felicity, but nothing else.

Then follows—

Article II:

> "George Rapp, and his associates (society), promise to supply the subscribers jointly and severally with all the necessaries of life, as lodging, meat, drink and clothing, etc., and not only during their healthful days, but also when one or more of them become sick or otherwise unfit for labor, they shall have and enjoy the same support and maintenance as before; and if, after a short or long period, the father or mother of a family should die, or be otherwise departed from the community and leave a family behind, they shall not be left widows or orphans, but partake of the same rights and maintenance, as long as they live or remain in the community as well in sick as healthful days, the same as before, or as circumstances or necessity may require."

These promises are :

To supply the subscribers with all the *necessaries of life*, as lodging, meat, drink, clothing, etc.

These shall be furnished not only during healthful days, but when one or more is sick or unable to work they shall have the same support and maintenance as if well.

If the father or mother of a family,

> "should die, or be otherwise departed from the community,"

and leave a family behind, they shall not be as widow or orphans,

> "but shall receive and partake of the same rights and maintenance *as long as they live and remain in* the community, as well in sick as healthful days, the same as they had before or as circumstances or necessity may require."

This assures support to the family so long as they remain in the community.

All these promises are either to the subscribers personally, or to their families, and are all personal and relate to their spiritual and material welfare while they remain members of the Harmony Society. No one of them extends *beyond* the actual membership in the Harmony Society. It is only while a member the promises are binding. Death, or departure from the society, terminates the liability of the promissor. Indeed, the nature of the promises could only be carried out during the continuance of the relation.

Only during such continuance could they attend religious meetings, and receive the necessary instructions in church and school, and be furnished with lodging, meat and drink.

Then comes *Article III*, which is in these words

> "And if the case should happen as stated above, that one or more of the subscribers, after a short or a long period, should break their promise and could or would not submit to the laws and regulations of the church or community, and for that or any other cause would leave Harmony, George Rapp and his associates *promise to refund him or them*, the value of his or their property brought in without interest, in one, two or three

annual installments, as the sum may be, large or small; and if one or more of them were poor and brought nothing in the community, they shall, provided they depart openly and orderly, receive a donation in money, according to his or their conduct while a member, or as he or their circumstances and necessities may require, which George Rapp and his associates shall determine at his or their departure."

This did not qualify the unqualified gift under section 1, into a base fee, or limited trust. It did not impress with a trust the free gift or donation. It was merely a covenant to return without *interest* the value of the thing given—not its value increased with (70) years' work of others. The value of the property brought in only.

It is to cover the case of a withdrawal from the society, and does not include death in the society.

This withdrawal, as also see preceding Section III., is recognized as a breach of contract by the one so withdrawing, for it says:

"should break their promise and could or would not submit to the laws and regulations of the church or community, and for that or any other cause would leave,"

then, and in that event,

"George Rapp and his society promise"

to do what?

(*a*) To refund him or them the value of his or their property brought in, without interest, in one, two or three annual installments, as the sums may be, large or small.

(*b*) And if the departing brought nothing into the society, yet, if they depart openly and orderly,

he shall receive a donation in cash money, according to their conduct, or as circumstances and necessities may require, which George Rapp and his society shall determine at his departure.

This applies only to such as withdraw. It does not include the estates of those who died.

The promise is to refund, without interest, the value of the property put in, payable in installments.

If no property was put in, then, if they have behaved, and depart openly, each will receive a

"*donation in money * * which George Rapp and his society shall determine* at his or their departure."

It seems obvious—

(*a*) That the present bill in equity is not brought for a breach of this contract. There is no averment in the bill that on the withdrawal the society refused to perform its part of this contract.

(*b*) There is no evidence that any one of the withdrawing members, under whom the plaintiffs claim, ever contributed any money or property to the society.

(*c*) There is no averment that any one of the withdrawing members ever demanded a return of any property alleged to have been contributed.

(*d*) If it was such a case, the last withdrawal was over fifty years ago, and would be ruled out under the Henrici and Speidel case—cited *supra*.

On the contrary, the plain theory of this bill is that so long as the society was in existence, carrying out its purposes, no one of the plaintiffs had any enforceable claim whatever.

The claim they now set up arises solely and only because they say the society is *dissolved*, either by common consent, or by reason of abandonment of its principles, and such dissolution happened after Duss became a member, in 1890. The trust denounced in paragraph 26 as ended, is only ended because the society has been dissolved.

It would seem certain that under this agreement, death, or withdrawal from the society during life, terminated the connection, except as to a family left in the society, and all the rights of each in any way to any of the property of the society. If it did not, if the withdrawing member still had his interest in the common property of the society, why was anything paid to him?

If he only conveyed a base fee—if he had a reversionary interest—why pay him the value of his contribution?

Only as a member did any one directly, or indirectly, have any rights, of, in, to, or out of the society property. These rights, even as a member, were limited to the precise things shown in the agreement analyzed, and they were, attendance at religious services, schooling and maintenance, embodying lodging, food, clothes, etc.

No one could withdraw and, after his withdrawal, claim to participate in the worship, or have the food, lodging, etc.

The withdrawal was contrary to his covenant to labor for the society, and to show due and ready obedience to the superintendents and laws.

By his withdrawal he violated these.

Refusing to perform his covenants, he could not insist on performance by George Rapp and his associates of their covenants.

Being no longer a member of the Harmony Society, he could not have any so called rights of property, or other rights, which, as a member, and solely because he was a member, he might insist on.

Withdrawal, or death, under the agreement, terminated all rights any member of the society had to any of its property, or to participate in any of its rights, or to receive support and maintenance from it.

If a family was left behind, then, as long as they lived, and remained in the community, they should be supported.

But this was the sole extent of the rights, even of the immediate family, and these rights continued only

> "as long as they live and remain in the community."

This agreement introduces no question of faith, or of peculiar religious belief. The society is not founded for the furtherance of any kind of religious belief or conduct. The contract is simply and solely a civil one, regulating the rights of the members. It contains nothing except the contractual relations between the individuals, and also, between the individuals and George Rapp and his society. Its evident purpose would have been destroyed if members could have partition, or sell their rights, or impart them to strangers, or if these rights descended to heirs, for in a few years outsiders would be in control. The society was supreme. The individual was nothing, except as a part of the society.

AGREEMENT OF 1821.

There is annexed to the answer a copy of the agreement of 1821, but there is no proof of its execution, and it has not been offered in evidence. It does not, however, differ from the contracts of 1805, 1827, 1836, which we consider and it is unnecessary to discuss it at length.

AGREEMENT OF 1827.

Then comes the agreement of March 9th, 1827.

The agreement of March 9th, 1827, is substantially the same as that of 1805, except in its preface or recital as to what the community is and what its purposes are.

That recital asserts that

> "By the favor of Divine Providence, an association or community has been formed by George Rapp and many others."

That such a community is

> "upon the basis of Christian fellowship."

That "the principles" of such fellowship have been

> "faithfully derived from the sacred scriptures,"

and such principles

(*a*) Include the government of the patriarchal age,

(*b*) United to the community of property adopted in the days of the apostles,

(*c*) Wherein the single object sought is to approximate, so far as human imperfections may allow, to the fulfillment of the will of God by

(1) the exercise of those affections, and

(2) the practice of those virtues,

(3) which are essential to the happiness of man in time and throughout eternity.

This analysis would seem to show that "Christian fellowship" is that upon which the society is founded.

That the principles of such fellowship are derived from the sacred scriptures, and are,

(1) Government of the patriarchial age;

(3) Community of property as in the days of the apostles;

The single object of the society is

"to approximate * * to the fulfillment of the will of God."

The mode in which this is to be done is,

(1) By the exercise of those affections, and

(2) The practice of those virtues,

(3) Which are essential to the happiness of man in time and throughout eternity.

The definite and particular things which this preface designates are Christian fellowship and the government of the patriarchial age, as it is found in the Scriptures, and community of property, as in the apostles' days.

The object sought is the fulfillment of the will of God by the exercise of the virtues and affections which are essential to happiness here and hereafter.

What is community of goods?

An economic system which obliterates private property.—Webster. Nolsey on *Communism.*

The society or State is supreme; the individual, the child supported by it. What the exact rules of communism which the apostles had, and how far they absolutely extinguished individual ownership, is not known, and hence, the agreement does not leave the rights and privileges and duties of members to be extracted from this general language.

It states that for the

> "good order and well being of said association"

t is necessary that

> "the condition of membership should be *clearly* understood, and that the *rights*, and *privileges*, and *duties* of *every* individual therein should be so *defined* as to prevent mistake or disappointment on the one hand and contention and disagreement on the other."

Therefore all of the individuals

> "do severally and distinctly, each for himself, covenant, grant and agree to, and with the said George Rapp and his associates as follows:"

In substance the "as follows" is the agreement of 1805, stated in more precise language.

The "as follows" comprises six (6) articles, which may be skimmed as follows:

Article I:

We, for ourselves, heirs, executors and administrators, do hereby

> "give, grant and forever convey to the said George Rapp and his associates, and their heirs and assigns, all our property, real, personal and mixed, * * * *as a free gift or donation for the benefit and use of the said association or community.*"

Did these members suppose they were only conveying a part of their title, and holding back a part?

Each one when he signed affirmed community of goods, which, in itself, was a parting with private ownership.

The covenants are express and implied, both as to negation of private ownership, with a covenant for further assurance, if necessary,

> "to vest a perfect title to the same in the said association, and to place the said property at the *full disposal* of the superintendents."

Article II.

Covenants to faithfully submit to the laws and regulations of the community, to obey the superintendents, to promote the interests and welfare of the community

> "not only by the labor of our own hands, but also by that of our children or families, and others who now are or hereafter may be under our control."

Article III:

If we could not render faithful obedience, or for any cause withdraw from the society, in that case

> "we do *expressly* covenant and agree to and with the said George Rapp and his associates, that we *will never claim or demand*, either for ourselves, our children, or for any one belonging to us, *directly* or *indirectly*, any *compensation*, *wages*, or *reward* whatever, for our or their labor or services rendered to the said community, or to any member thereof; but whatever we or our families, jointly or severally, shall or may do, all *shall be held and considered as a voluntary service for our brethren.*"

Article IV:

In consideration of these preceding covenants, George Rapp and his society

> "adopt the undersigned, jointly and severally, as members of the said community, *whereby* each of them obtains,

(1) The privilege of attending every religious meeting, and,

(2) Receiving instruction in church and school for themselves and families,

> "as may be reasonably required both for their temporal good and for their eternal felicity."

Article V:

Rapp and his associates

> "further agree to supply the undersigned severally with all the necessaries of life, as clothing, meat, drink, lodging, etc., for themselves and their families."

This is to cover their days of sickness. And, in addition, they shall have

> "such medicine, care and attendance and consolation as their situation may reasonably demand."

If a member, who is father or mother, die,

> "or be otherwise separated from the community, and leave their family behind, such family shall not be left orphans or destitute, but shall partake of the same rights or maintenance as before, *so long as they remain in the association.*"

Article VI:

If any member for any reason withdraws from the association

> "then the said George Rapp and his associates agree to refund to him or them *the value* of all such property, without interest, as he or they may have brought into the community, in compliance with the first article of this agreement, and the said value to be refunded in one, two or three annual installments, as the said George Rapp and his associates shall determine."

If the party brought nothing in, yet, if he departs openly, he shall

> "receive a donation in money, according to the length of their stay, and to their conduct, and to such an amount as their necessities may require in the judgment of the superintendent of the association."

So far as the rights of the individual are concerned, this agreement of 1827 left them where that of 1805 did. No one had any individual specific right in, or claim to, any of the property of the Harmony Society. The sole right the individual had was as a member of the community, and that was a common joint right, several only in what the covenants of the agreement gave him. These were, attending religious meetings, instruction in church and school, clothing, food,

etc., and general support. If he withdrew, and his family remained behind, so long as they remained they were to be supported. On withdrawing, the value, without interest, of the property contributed was to be repaid. If no property had been contributed, a donation in money to be fixed by the superintendent was to be given.

But the rights of the individual were all personal. They ended with his or her death or withdrawal. He never did have any right to any of the property of the society, except as he was part of the society, and when he died or withdrew neither his heirs nor personal representatives had any right or claim to the same. It, in some sense, resembles a member of a church or village, who, so long as a member, enjoys the property of the church or village, but as soon as he leaves or dies this right, which was personal, ceases. Unlike a village, the number of whose inhabitants is uncertain, this society was fixed and definite in its membership, all evidenced by the written agreements signed by the members.

The property he brought into the society, and the work he did while in it, were the consideration for the support, maintenance, etc. They were declared to be a free gift by him to to the society. Had it not been for Article VI he could not have claimed a return of the value, but that value was limited to cases where one withdrew, (not when he died in the society). Then, it was the value without interest. It was not the indentical thing contributed, but the value, without interest, and such value was to be repaid in one, two and three years.

If one withdrew and demanded the return value, and the society refused to pay it, probably an action would lie; but it would be a personal action, and on his death, if it survived, would go to his personal representatives, *i. e.*, executors or administrators.

In no case had the individual member aught that descended to his heirs at law.

The withdrawal, or death, absolutely and finally severed the tie which bound the individual to the society, and terminated his right to demand the fulfillment of any covenants, or intermeddling in any way with any of the property of the society. No matter what was done by the society after his death or withdrawal—no matter what disposition it made of the property of the society—no injury was done to the departed member. He was not wronged. He no longer was interested therein, and he could no more interfere than a perfect stranger.

The preface did put the society on the basis of Christian fellowship, and it fixed, as its guiding principles, the government of the Patriarchal Age and the community of goods.

I suppose that this government of the Patriarchal Age meant some one as the head of the family or tribe, which family or tribe would include the children, grandchildren and collaterals, but it seems hardly necessary to trace it out now, owing to the change made after Rapp's death by the Article of 1847.

See 3 Wallace, Jr., 70.

The communism was specifically stated to be

> "the community of property adopted in the days of the apostles."

What was that?

The only references to it in the Holy Scriptures are in the Acts of the Apostles.

During the Pentacostal glory, when the apostles did many signs and wonders, fear came upon every soul, and in Acts, chapter 2, verses 44 and 45, it is recorded:

> "And all that believed were together and had all things common; and sold their possessions and goods, and parted them to all men, as every man had need."

In chapter 4, after telling of the signs and wonders the apostles John and Peter did, it is said: (verses 33,34, 35.):

> " * * and great grace was upon them all. Neither was there any among them that lacked; for as many as were possessors of lands or houses sold them and brought the prices of those things that were sold, and laid them down at the apostles' feet, and distribution was made unto every man according as they had need."

Barnabas sold his land and gave in the money, but Ananias and Sapphira were stricken with death for keeping back part of the price they sold a "possession" for.

The community of goods the Harmony Society founded was more general and broader, but it was but a part of the agreement of 1827, which provided in the most specific manner to detach any individual right or claim of any one individual to the common property, and it emphasized what was already really implied, in the contract, that it depressed the individual and elevated the community.

The community was everything. The individual nothing, except as he was protected by express covenants.

The single object of the community was (what, theoretically, all governments are for), that each should within its sphere approximate, as far as human imperfections will allow,

> " to the fulfillment of the will of God,"

by the

> "exercise of those affections, and the practice of those virtues, which are essential to the happiness of man in time and throughout eternity."

To fulfill the will of God is every one's duty—indeed, in one sense, every one's destiny.

The affections and virtues, by the exercise of which the Harmony members were to effect this, are not enumerated.

Every state or society, large or small, in a Christian land, seeks in some way to fulfill a part of the will of God, and to do it in some appropriate, and by some efficient manner, and this agreement of 1827 in this respect differed from no other government or society, except, that it specifically stated its *single object*, and prefaced it by agreeing that the best mode of accomplishing this result was government of the patriarchal age and community of goods.

AGREEMENT OF 1836.

The agreement of 1836 follows that of 1827. It repeals Article VI. of the agreement of 1827, and makes more emphatic—but I do not think any more certain—the proposition that the individual had no separate and specific property or rights in property of the society, but his rights were in common with all, and in their nature joint. His death or withdrawal cut him off from the society and all its property. It differs especially from all prior agreements in taking away the right of a return of value.

After reciting *in extenso* Article VI. of the agreement of 1827, it provided as follows:

"*And whereas*, The provisions of the said 6th article, though assented to at the time, manifestly *depart* from the great principles of a *community of goods*, and may tend to foster and perpetuate a feeling of inequality at variance with the true spirit and objects of the association;

"*And whereas*, The principle of restoration of property, besides its pernicious tendency, is one which cannot now be enforced with uniformity and fairness, inasmuch as the members of the association, in the year 1818, under a solemn conviction of the truth of what is above recited, did destroy all record and memorial of the respective contributions up to that time;

"*And whereas*, Continued happiness and prosperity of the association, a more intimate knowledge of each other, have removed from the minds of all members the least apprehension of injustice and bad faith;

"*Now, therefore*, Be it known by these presents that the undersigned, with a view to *carry out fully the great principles of our union*, and in consideration of the benefits to be derived therefrom, do hereby solemnly enter into covenants, and agree with each other, as follows:

"1st. The said Sixth Article is entirely annulled and made void, as if it had never existed; all others remain in full force as heretofore."

Then came

Article 2d:

"All the property of the society, real, personal and mixed, in law or equity, and howsoever contributed or acquired, shall be deemed now and forever *joint and indivisible stock*. Each individual is

> to be considered to *have finally and irrevocably parted* with all his former contributions, whether in lands, goods, money or labor, and the same rule shall apply to all future contributions, whatever they may be."

To me, this does not add to what was contained in the agreement of 1827, except that it is stated in more specific words.

All the property of the society is declared to be

> "joint and indivisible stock."

But this is what it was under the contracts of 1805, 1827. Community of goods necessarily implied it.

It, therefore, assumed a joint tenancy, which included the right of survivorship, and therefore forbade the idea of a division.

See Kennedy's Appeal, 60 *Pa. St.*, 511.

The individual

> "*finally* and *irrevocably* parted with all his * * contributions,"

past or future.

He no longer had any right of property in any of the property he had handed in.

Then came

Article 3d:

> "Should any individual withdraw from the society or *depart this life, neither he, in the one case, nor his representatives in the other, shall be entitled to demand an account* of said contributions, whether in land, goods, money or labor, *or to claim anything* from the society as matter of right. But it shall be left altogether to the discretion of the superintend-

> ent to decide whether any, and if any, what, allowance shall be made to such member or his representatives as a donation."

What about a base fee, reversionary rights, limited trusts? Read Articles 2 and 3. Did they suppose when they said *finally and irrevocably parted* they did not mean it? But only meant they granted a limited estate? Turn back to Agreement of 1827.

Here, again, the idea involved in the Agreement of 1827 is more explicitly and plainly stated, but to my vision it is clearer than it was in the agreement of 1805 and 1827, only, because the language is bolder and more pronounced.

Each individual's connection with the society was personal. Membership was the life of the connection. Its dissolution by death or departure from the society ended the membership. This ended the personal connection, and hence, ended all the claims and rights in and to the society and any of its property.

This was in the Agreement of 1805 and 1827, and the Agreement of 1836 only stated it in more glaring words.

It reiterated, that, in case of death or withdrawal, there shall be no right on the part of any one

> "to demand an account of said contributions, whether in land, goods, money or labor,"

and then it added,

> "or to claim anything from the society as matter of right."

He was wholly cut off, and to the superintendent was left the decision of the question,

> "whether any, and if any what allowance shall be made to such member or his representatives as a donation."

George Rapp's death on August 7th, 1847, led to the preparation and execution of a new agreement dated August 12th, 1847.

AGREEMENT OF 1847.

It recited Rapp's death, and averred it was necessary,

> "that some plan should be agreed upon to regulate its future affairs, promote its general welfare, and preserve and maintain it upon its original basis."

Therefore,

> "* * * the surviving and remaining members of the Harmony Society, *and constituting the same*,"

do severally

> "covenant, grant and agree to and with all the others thereof,"

as follows:

Article 1st:

> "Recognize, re-establish and continue,"

the Articles of 1827, save Article VI, and that of 1836,

> "*except* so far as the same are affected by the death of the said George Rapp, or hereinafter altered or modified, and to this extent we declare the said articles to remain in full force."

Article 2nd:

> "We hereby ordain and establish a board of elders, which shall consist of nine members of the Harmony

Society, and their successors to be chosen as hereinafter provided."

t will be noticed that the one qualification for an elder was t he or she should be a member of the Harmony Society. e sex of the elder was not inquired into, and there is nothin the Agreement of 1847 to prohibit a woman from fillthe office.

Article 3rd:

"The board of elders shall have and exercise the following powers, to-wit:

"1st. To regulate and manage *exclusively* the *internal*, temporal concerns of the Harmony Society; to appoint and remove superintendents in the several departments of industry; to make regulations and give orders in relation to their business operations, and generally to take care that the members perform the duties assigned to them."

Here is given to the board

"the exclusive management of the eternal, temporal concerns of the society."

Not of a portion, but of all of them. And the power is en to manage *exclusively*, not in conjunction with others, as others shall think best, but the power is absolutely ged in the elders.

hen, they also have the power to appoint and remove erintendents in the several departments of industry, to e regulations and give orders as to the business operations ach, and generally to see that the members do what they ordered to do.

will be noticed that discretion was left with the elders as hom they would appoint superintendents. They are not

required to appoint members of the society, but are left in that respect to the exercise of their own judgment.

> "2nd. To determine all disputes and misunderstandings amongst the members of the society; to advise if necessary, reprove any member who may be in fault, or found delinquent in his duty."

This established the elders as a court for the settlement of all disputes and misunderstandings amongst the members of the society."

> "3rd. To admit new members into the society, and to expel them therefrom. *New members when admitted shall subscribe this agreement* as the evidence of their membership, *and of the* rights acquired by, and the duties imposed upon them."

The prerequisite to membership in the society was, as all the oral testimony in this case agrees, and it is, and ever has been, that the member joining shall

> "subscribe this agreement as the evidence of their membership."

There was no other evidence of membership than the signature to the agreement, and this was a *sine qua non* to membership.

Then this agreement not only evidenced the membership, but, in addition, stated,

> "the rights acquired by, and the duties imposed upon them."

Thus, the Agreement of 1847, and the preceding agreements of 1805, 1827, and 1836, when examined, would specifically determine the rights of each member, and the duties of each member.

> "4th. To establish regulations for the maintenance and improvement of the morals of the society, and for the instruction of its members."

"5th. To appoint one or more of its members spiritual leaders and instructions with such authority in relation to church discipline as shall be conferred by the board."

"6th. To remove from the Board of Elders and to declare his seat vacated, also to remove from office either or both of the trustees hereinafter appointed for the management of the external affairs and their successors in office."

"7th. To fill all vacancies in the Board of Elders, occasioned by the death, resignation or removal from office any of its members and their successors, and so as often as a vacancy shall occur, to fill all vacancies in the office of trustee, when either or both of the trustees or their successors, shall die, resign his office, or be removed from the same, and so often as a vacancy shall occur."

"8th. The concurrence of six members of the Board of Elders shall be deemed the act of the board and a legal exercise of any of the powers hereinbefore conferred on the said board."

This Board of Elders is said to be un-American, self-perpetuating, despotic. But what was the patriarchal government of Father Rapp? What power did he possess? Read paragraph 1 of the bill.

A further provision was for a book of record, which should

"full and absolute evidence of the facts and proceedings therein contained,"

but such book does not seem to have been kept.

Article 4th:

"We do further ordain and establish a Board of Trustees for the *exclusive* management of the *external* business and affairs of the society, which board shall consist of two persons, who shall be members of the

Board of Elders, and their successors, who shall be appointed as hereinbefore provided."

EXTERNAL BUSINESS.

This Board of Trustees was for

> "the exclusive management of the *external* business and affairs of the society."

It was to consist of two persons, each of whom was to be a member of the Board of Elders.

What did they mean by *external* business? It was contrasted with internal. It was not, then, the shops in Economy, or the farm, or the dairy, or the home store.

It was *external*, and it was *external business*, external affairs.

What does that include? All kinds of business. *All kinds of affairs.* Broadness of language.

Article VI

> "The said trustees shall jointly and severally have and exercise the powers following:"

Note that the power is joint and several. Not merely a joint, but also, equally several.

> "In *their own names* or that of *either of them, or otherwise*, to purchase and *sell*, deal, barter, exchange, and traffic, make all contracts and bargains in the prosecution of the business, to invest the funds in stocks and other securities, and make transfers and assignments, to collect debts, receive

and pay out moneys, settle claims, compromise disputes, institute legal proceedings, appoint and dismiss agents, clerks, and attorneys in fact, and at law, *and generally to transact all the external business affairs of the society.*"

It is now said their sole power was to invest funds as trustees usually do. This is but one of their powers.

Ratification and adoption by agreement of 1890. Read it.

The bill approved all of these until 1890, but now they are all void.

Couldn't make partnership. Why not?

The agreement expressly authorized the trustees

"in their *own names, or* that of either of them, or otherwise"

to do what?

Merely invest trust money as an ordinary trustee, as the appellants now allege?

By no means.

But, also, to

"purchase and sell, deal, barter, exchange and traffic, make all contracts and bargains in the prosecution of the business, to invest the funds in stocks and other securities."

There is no limit whatever to

"the business"

o be prosecuted.

In all respects the trustees might

"sell, deal, barter, exchange and traffic."

And, in addition, the trustees are authorized

> "generally to transact all the external business affairs of the society."

Under these agreements, and, especially, since 1847, the trustees carried on and engaged in almost every conceivable business.

They were in the oil business; they were oil producers and oil refiners; they were in the business of the manufacture and sale of glass, of iron, of steel, of all kinds of hardware and cutlery and files, of cars, of woolen goods, of silk goods, of bicycles, of whiskey, of beer, of wine.

They laid off plan of and sold lots, and, really, built up Beaver Falls thereby.

They ran saw mills, great and small.

Were largely in the timber business and coal business.

They built railroads and were a large factor in the construction of the Pittsburgh & Lake Erie Railroad.

They organized a bank, and for years it was one of the largest in Western Pennsylvania.

They did business in their own names and the name of others. They had agents and partners.

They did all this prior to 1890, during which period the bill in this case says the society was perfectly conducted.

In 1890, all the then members of the Harmony Society executed a new agreement, which recited and approved of the prior agreements, but, also, specifically approved of everything the trustees had done.

The agreement enacted as follows, (see Record, vol. 1, pp. 71, 72):

> "We do hereby approve and confirm any and all acts, matters and things done and transacted by the board of elders of the Harmony Society, as the same was from time to time constituted, since the date of the articles aforesaid, establishing said board, and

we hereby ratify and confirm the appointment of the present board of elders, to wit: Jacob Henrici, Ernest Woelfel, Michael Staib, Johannes Scheid, Moritz Frederick, Gottfried Laupp, J. Jacob Niclaus, Herman Fishern and John S. Duss.

"We do also hereby approve, ratify and confirm all acts, matters and things done, transacted and performed by the *Board of Trustees of the Harmony Society*, constituted first, of Romelius L. Baker and Jacob Henrici, until January 11th, 1868; afterwards, and from that date until January 21st, 1890, of Jacob Henrici and Johnathan Lenz, and since the last mentioned date, of Jacob Henrici and Ernest Woelfel, hereby ratifying, confirming, holding, declaring as good and effectual in law and in equity, all acts, matters and things done, transacted and performed by each and all of said trustees in the purchase and sale of personal property, and in the making of contracts, investment of funds, purchase, sale and transfer of stocks, bonds and other securities, loaning or borrowing money, collection and payment of monies, settlement or compromise of claims or disputes, in the institution and prosecution of legal proceedings, in the employment and discharge of attorneys in fact and at law, in the making of donations, in the purchase of real estate, and in the sale thereof, in the execution and delivery of deeds, conveyances, transfers and assignments, whether of and pertaining to real or personal estate, in the execution or delivery of notes or obligations of any kind and generally all acts heretofore done by said trustees, in the conducting, managing and transacting of the business of the society, and whether done by said trustees or either of them, severally and in his own name as trustee, or jointly in the joint names of himself and his co-trustee."

Yet, with all this, it is now said that the only power the trustees had was to loan money!

There is no limitation which confines them solely to external business and external affairs transacted by themselves. All the *external business* was committed solely to them, and

also the mode of its transaction, whether separately or jointly with others.

They could then do this in the name of any other person, natural or artificial. There is no limitation put upon the business which the trustees may engage in, nor the manner in which, nor the extent to which, this shall be done. This is left to the discretion of the trustees, and they are given absolute, unlimited and supreme power,

> "to transact all the external business and affairs of the society."

The trustees, at any time, could change real into personal property, and personal property into real. They, therefore, could convey real estate, and accept in lieu thereof personal property, such as stock or money.

> "2d. To make donations to seceding and excluded members and to the representatives of those who are deceased and for such benevolent and charitable purposes as they may deem prudent and fit."

The donations, it will be noticed, were to those withdrawing and the representatives of the dead, and for benevolent and charitable purposes. The size of such donations, and when, and to whom given, are left exclusively with the trustees.

> "3rd. The said trustees shall have power jointly to purchase real estate in their own names and also in their joint names to grant, bargain, sell and convey all or any of the lands and tenements now or hereafter owned by or belonging to the said society, and for this purpose to execute deeds of conveyance in fee simple or otherwise in their joint names, but the proceeds of all such sales shall be held in trust for the society."

> "4th. This provides for the rights of possession, entry and action in reference to litigation connected with the society's property."

> "5th. The powers hereby vested in the said trustees shall extend to and embrace all the property of said society, real, personal or mixed, whether standing or held in the name of the late Frederick Rapp, the said George Rapp, or in any other name or form whatsoever."

This last is a reiteration of the broad powers of the trustees and extends to all the property of the society, real, personal and mixed; and it is also an affirmation of the proposition that the property was not then necessarily held in the name of any one person, for the agreement says :

> "whether standing or held in the name of the late Frederick Rapp, the said George Rapp, or in any other name or form whatsoever."

Article 6th:

Declares that the entire property—real, personal and mixed—of the society

> "shall be *deemed the common property of said society*, and each trustee now or hereafter appointed hereby disclaims all *personal interest* in the present resources and future earnings of the society, *other than that of a member* thereof, according to the articles of association hereby reestablished and continued; and according to the present agreement."

This again affirms that the community owns the property, and that the individual had no specific, separate, personal rights thereto, or thereunder. His personal rights were under the covenants made to him. His rights as a member of the society, as a part of the indivisible whole, were in common with all members, and were joint, and terminated and ceased—as did also his right to enforce the covenants—when he died or departed from the society.

His right was wholly and solely, and only an individual and personal right, which did not survive him, which he could not sell or will, and of which he could not ask partition.

The agreement of 1847 did not alter the provision of the said contracts of 1805, 1827 and 1836 in reference to the rights, duties and interests of the individuals composing the Harmony Society; but it did change the government from the individual patriarch, who was the supreme ruler, to a government by and through a board of elders and board of trustees, who had the powers of a patriarch. Under the absolute patriarchal government the patriarch appointed his successor, as he this day does in some of the tribes in Asia and Europe.

The respective rights of the individuals who composed the Harmony Society were not enlarged, but so far as the property right is concerned, were practically left where they were, except that these rights were made subject to the governing powers of the board of elders and the board of trustees.

It is not necessary to further examine now the agreements of 1890, 1892 and 1894. Nothing in either of them changes any of the provisions of the former agreements. Each adopts, confirms and approves all said prior agreements.

CONCLUSIONS AS TO MEANING OF CONTRACTS.

In a broad, but perfectly correct way, these agreements may be defined as contracts between the joining member and

all the others who then constituted the Harmony Society, and also contracts *inter sese.*

Each, on joining, gave up all—promised obedience and work in consideration that the society would feed, clothe, maintain and educate each for his or her life, and their families after them, so long as the joining member or his family continued in the society.

A breach of his covenant of obedience or of work—and especially his withdrawing from the society—rendered it impossible for him to insist upon the performance of the covenants by the society. These covenants were dependent. Only while he was a member and worked for it was he entitled to performance for his benefit.

The very nature of the covenants of the society made shows they were only personal to the joining member, and for his life, not for his remote descendants. They were:

(*a*) To adopt him as a member.

(*b*) *Whereby* (that is, because of his membership), he obtains the privilege of being present at every religious meeting, and of receiving instruction in church and school.

(*c*) The society is to supply him with the necessaries of life—clothing, meat, drink, lodging, for themselves and their families, and this includes their days of infirmity, when unable to labor.

(*d*) When sick, medicine, attendance and consolation.

(*e*) If die, and leave family, they shall be provided for,

"so long as they remain in the society."

(*f*) Return of value of contribution if withdraw.

The gift, or donation, was absolute, it and the covenant of obedience and work was the consideration for the adoption as a member, the church and school privileges and the furnishing of meat, drink, lodgings, medicines, support of family and return of value on withdrawal, (*but only on withdrawal.*)

The contract, *inter sese*, was the affirmation of the general policy of the society, and its objects and purposes.

THOSE WHO COMPOSED THE SOICETY AT ANY ONE TIME ALWAYS FROM 1805 DOWN TREATED ALL ITS PROPERTY AS BELONGING TO THEM.

Attention, however, should be called to a most significant construction, which the society itself put upon the power of its members at any time, and that was, that the persons who at the time constituted the members could make such new contracts as they saw fit, and this without any reference to the heirs of those who were dead, or to those who had left. This right was constantly asserted from 1805. It was done in 1805, 1821, 1832, 1836, 1847, 1890. It was in the most pronounced manner the assertion of the right of the community as it existed at the different times to add to, alter and change the written contracts.

In 1827 it added to the contract of 1805 the Patriarchal Government and Communism.

In 1836 it struck out Article VI of the contract of 1827.

In 1847 it organized a new mode of government. It substituted a Board of Elders and Trustees instead of the patriarch and general agent, but gave them only the patriarch's power. No member denied the right. No heir of any member.

RULES OF CONSTRUCTION.

This asserted and exercised right was a practical and continued change in, and construction of, the then existing articles of agreement, and the assertion of the right of the surviving members, as a community, to all the property of the society, and to govern it as they saw fit, that the individual member who died or withdrew cut himself off from and terminated all his rights to the society or its property.

There is no surer way to ascertain the meaning of a contract, and the rights of parties under it, than to see what the parties have done in carrying it out.

Its practical interpretation

> "is entitled to great, if not controlling, influence."
>
> Topliff vs. Topliff, 122 *U. S.*, 131.
> Merriam vs. U. S., 107 *U. S.*, 437.
> District of Columbia vs. Gallaher, 124 *U. S.*, 505.
> Lehigh Coal Co. vs. Harlan, 27 *Pa.*, 439.

The contract of 1847 was not a departure or change of the former agreements. It reaffirmed them.

Only change of plan of *who* exercised patriarch's powers.

FREDERICK RAPP'S AGENCY.

Prior to the agreement of 1847, the society had what was termed a general agent, or an agent in temporal affairs. Frederick Rapp, the adopted son of George Rapp, for a long time was such agent, and on the death of Frederick Rapp, in 1834, George Rapp, himself, was appointed such agent.

(See the appointment dated July 5th, 1834, and offered in evidence as "Exhibit 85").

Such agent has the general power to transact the business of the society, and to hold in his own name all the property of the society, but it was distinctly provided in the instrument appointing him, as it had been distinctly declared by Frederick Rapp, under his own hand and seal, in the instrument of 1825, referred to in the present exhibit, as follows:

> "It is distinctly understood that in accepting and acting under this power, the said George Rapp disclaims all *personal interest* other *than that of a member of said society* in the present resources or future earnings of the society in conformity to the principles and terms upon which the Harmony Society was originally founded, as fully and effectually as was done by the late Frederick Rapp in the instrument already adverted to, dated 20 July, 1825, the terms of which said instrument the said George Rapp adopts for himself and repeats in every particular."

BILL SEEKS DISTRIBUTION OF SOCIETY'S PROPERTY.

What the present bill in equity really seeks to accomplish through the remedies by injunction, receiver, and a decree for an account—see seventh prayer of the bill—is shown in that prayer, which is as follows:

> "That your Honors will order a decree, a marshalling of the assets which were of the Harmony Society, and a winding up of its affairs, and a division and distribution of its assets, real and personal, either by means of a sale under order of your Honorable Court, or in such other manner as your Honors may deem most expedient to and amongst the parties legally and equitably entitled thereto, including your orators, and that your orators may receive their just share and proportion of said assets, real and personal, in severalty."

The plaintiffs each want in severalty a share of all the property of the Harmony Society.

What does that property consist of?

As per Mr. Dickson's statement, page , certain real and personal estate, subject to certain debts.

When did the society become the owner of such property?

There is no specific answer to this save that *all* of it was purchased or earned after the society located at Economy, in Beaver County, which was in 1824.

APPELLANTS HAVE NO RIGHT TO ANY PART OF THE SOCIETY'S PROPERTY.

The real estate at Economy is its oldest acquisition, and the Leetsdale property and all the personal property was acquired in later years.

It is certain that most of it was acquired in external business or in profits from it.

It is also certain that no one of the plaintiffs, or any other member, could possibly identify the property of any ancestor put into the society.

What possible claim, in law or equity, can either one of these ancestors have to the property the Harmony Society owns in 1896?

Over seventy (70) years ago the connection of each with the society was severed. How is it possible to now put life in such a claim?

If the theory of the plaintiffs be correct, that all the descendants of all persons who ever were members of the Harmony Society may, at any distance of time, after the death or withdrawal of the ancestor, demand an account of, and share in, the property of the Harmony Society, see what it leads to.

Mr. Duss showed, page ——, that there have been 1,050 members of the Harmony Society.

Mr. Schoyer more than doubles it.

The descendants, lineal and collateral, of all these are, under the plaintiffs' theory, entitled to a share in the property, and if they are so entitled they would seem to be necessary parties to this bill.

There would be several thousands of such persons, and even if the society had millions, the share of each would be a trifle.

Why should you limit, as Mr. Schoyer does, the claimants merely to those who gave property? Those who labored a lifetime should not be forgotten.

If it were true that the member who withdrew still held his rights in and to the community and its property, and when he died his heirs at law could assert them, how would you define such rights? What were they? Could the heirs force themselves into the society and demand support? Could the heirs at any time insist on a partition of the property? Could they demand an account, and, if refused, force a settlement? Could the one who withdrew do so?

If so, how futile these written agreements were, and what a weak, instead of a strong, sturdy society the Economites were!

Surely these written agreements never meant that such a result should follow from the practical workings of the society. It would be to give to such decedents, for seventy years after their death, a share in the work and labor of hundreds of persons for many years after their death. If for seventy years, why not for one hundred and fifty?

What part of any one of these articles shows even a leaning towards such a result?

What decision is there, what principle of law, which would even squint at it?

MEMBERS OF SOCIETY AT ANY TIME MAY DISTRIBUTE ITS PROPERTY AMONG THEMSELVES.

Of all things these articles do seem particularly and carefully to accomplish it is that the Harmony Society at all times is composed solely and only of its then members—not of those, and also, all the descendants of its dead and withdrawn members, but of its present actual members.

How would the assets be distributed? There are now eleven (11) members of the society. In all there have been 1050 members. All but eleven have died. Into how many shares would the property be divided? Judge Greer, in the Nachtrieb case, held, to only the present live members.

It is the society, as a society, which owns its property. It is the entire body as one whole. If at any time the society did dissolve, its property would go to the persons who then were its members. No one else has any legal or equitable claim to it except those members. To them, and to them alone, it would belong, and among them it would be divided.

The Society Through Its Trustees Has an Absolute Estate in Fee Simple, Not a Base or Conditional Fee.

The appellant's idea that the property would revert to the donors is based on the idea that the donations were base fees or resulting trusts.

A base fee is a conditional estate by which the estate terminates when the event happens. Grant to A until B returns from Rome, etc. It is applicable to real estate. The condition must be clearly stated in the deed.

Such an estate, therefore, is not an absolute parting with all the donor's interest in the thing granted, but leaves an estate in him, which is carved out of the entire fee simple estate which he owned in the property.

A trust resulting is an implication of law that the grantor or donor parted with his property only to and for a limited and specific use, and when that use terminates the trust reverts. The use, which is thus limited and defined, must appear plainly and expressly in the granting interest.

Now, did the members who joined the Harmony Society intend to grant only a conditional estate, or partial estate, and reserve to themselves a reversion in it?

Each of the subsequent agreements executed by the society also contains such a clause, reciting and conforming the agreements of 1805, 1827 and 1836.

Extracts from the different agreements will conclusively establish this.

The preface to and the first article of the agreement of 1805 are as follows:

> "Be it hereby known to all who need to know it that the following agreement has this day been made and concluded between us, the subscribers of the one part, and George Rapp and his associates of the other part:
>
> Article 1. We, the subscribers, on our part and on the part of our heirs and descendants, *deliver up, renounce and remit all our estate and property consisting of cash, land and chattels, or whatever it may be, to George Rapp and his associates, in Harmony, Butler County, Pennsylvania, as a free gift or donation, for the benefit and use of the community there, and bind ourselves on our part, as well as on the part of our heirs and descendants, to make free renunciation thereof, and to leave the same at the disposal of the superintendents of the community, as if we never had nor possessed it.*"

A part of the preface and the first article of the agreement of 1827 are as follows, (page 53 of the record):

> "Therefore, Be it known to all whom it may concern: That we, the undersigned, citizens of Beaver county, in the Commonwealth of Pennsylvania, do severally and distinctly, each for himself, covenant, grant, and agree to, and with the said George Rapp, and his associates, as follows, to wit:
>
> "Article 1. We, the undersigned, for ourselves, our heirs, executors and administrators, do hereby give, grant, and forever *convey, to the said George Rapp and his associates, and their heirs and assigns, all our property, real, personal and mixed, whether it be lands and tenements, goods and chattels, money or debts due to us, jointly or severally, in possession, or in remainder; or in revision, or in expectancy, whatsoever or wheresoever, without evasion, or qualification, or reserve, as a free gift or donation, for the benefit and use of the said association or community; and we do hereby bind ourselves, our heirs, executors and administrators, to all such other acts as may be necessary to vest a perfect title to the same in the said association, and to place the said property at the*

full disposal of the superintendents of the said community without delay."

Articles 2 and 3 of the agreement of 1836 are as follows, (page 59 of the Record):

"Second. *All the property of the society, real, personal and mixed, in law or equity, and howsoever contributed or acquired, shall be deemed, now and forever, joint and indidivisible stock. Each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in land, goods, money or labor; and the same rule shall apply to all future contributions, whatever they may be.*

"Third. *Should any individual withdraw from the society, or depart this life, neither he, in the one case, nor his representatives in the other, shall be entitled to demand an account of said contributions, whether in land, goods, money or labor, or to claim anything from the society as matter of right.* But it shall be left altogether to the discretion of the superintendent to decide whether any, and, if any, what allowance shall be made to such member, or his representatives, as a donation.

"Invoking the blessing of God on this sacrifice of all narrow and selfish feelings to the true purposes of the association and to the advancement of our own permanent prosperity and happiness, we have signed the foregoing instrument, and affixed thereunto our respective seals, at Economy, this 31st day of October, 1836."

The agreement of 1847 (pages 61 and 62 of the Record), provides as follows:

"Therefore, Be it known to all whom it may concern, that we, the undersigned surviving and remaining members of the Harmony Society, and constituting the same, do severally and distinctly

each for himself covenant, grant and agree to and with all the others thereof, and with those who shall hereafter become members as follows: That is to say,

"Article 1st. *We do hereby solemnly recognize, re-establish and continue the articles of our association* (the sixth section excepted) *entered into at Economy on the 9th day of March, A. D. 1827, in the presence of John H. Hopkins and Charles L. Voltz, and the supplement thereto, adopted at the same place on the 31st day of October, A. D. 1836, in the presence of Charles L. Voltz and William F. Baum*, except so far as the same are affected by the death of the said George Rapp, or hereinafter altered or modified, and to this extent we declare the said articles to remain in full force."

Here is an absolute, unqualified, definite grant. No use is stated, or hinted at, except the use of the grantees put in all deeds. No estate in reversion ever imagined. No contingency upon which the donor might again regain his property even hinted at. The donor parts absolutely with his estate, absolutely and unqualifiedly, without any reversion.

In the language of the agreement of 1805 it is—

"all our estate and property."

And it is—

"as a free gift or donation."

Binds himself—

"as well as on the part of our heirs and descendants to make free renunciation thereof, and leave the same at the disposal of the superintendents of the community *as if we never had nor possessed it.*"

The agreement of 1827:

The language is—

"do hereby give, grant and forever convey to the said George Rapp and his associates, and their heirs and assigns,"

"all our property, real, personal and mixed, whether it be lands and tenements, goods and chattels, money or debts due to us jointly or severally."

Now, note—

"in possession or in *remainder* or in *reversion* or in *expectancy* whatsoever or wheresoever, without evasion, qualification or reserve."

"As a free gift or donation."

"And we do hereby bind ourselves, our *heirs*, executors and administrators, to all such other acts as may be necessary to vest a *perfect title* to the same in the said association, and to place the said property at the *full disposal* of the superintendents of the said community without delay."

Could there be a more absolute, unqualified parting with all title to the property donated than this?

It names, as if to exclude the idea of a reversion or a resulting trust—

"in reversion or in expectancy."

It binds himself and heirs to make—

"a *perfect title* to the same in the said association."

Not a base fee or a limited trust, but a *perfect title.*

There is no limitation of the uses to which the property might be put.

"For the benefit and use of the said association or community."

Just as our deeds convey to and for the use of the grantee.

No limit to the use.

And then, this is to be a *perfect title*, so that it may be

"at the *full disposal* of the superintendents."

How could it be a *perfect title*, and at such full disposal, if George Rapp and his heirs only got a "base fee," or if the estate was only to endure so long as the society had a "patriarch," or practiced "celibacy," or preached "the second advent"?

Then, the agreement of 1836:

It denounces the idea of "*restoration of property*," as being of "pernicious tendency," and because it would be impossible to enforce it fairly.

It declares that—

> "all the property of the society, real, personal and mixed, in law or equity, and howsoever contributed, or acquired, shall be deemed, now and *forever* "joint and indivisible stock."
>
> "Each individual is to be considered to have *finally* and *irrevocably* parted with all his former contributions, whether in lands, goods, money or labor, and the same rule shall apply to all future contributions whatever they may be."

"*Finally and irrevocably parted.*"

What an absurdity to talk of reserving an interest in the thing granted!

Section 3:

> "3d. Should any individual withdraw from the society, or depart this life, neither he, in the one case, nor his representatives in the other, shall be entitled to demand an account of said contributions, whether

in land, goods, money or labor, or to claim anything from the society as matter of right. But it shall be left altogether to the discretion of the superintendent, to decide whether any, and if any, what allowance shall be made to such member, or his representatives as a donation."

There is, then, in all these articles a marked and expressed intent that the donor parted with all his estate, and neither he nor his heirs, at any time, were to have any claim, or title or right of any kind to any part of it.

The title granted was to be, and was a *fee simple absolute.*

No matter what happened in the future, or who it went to in the end, the donor could not follow it.

Here is the *marked difference* between our case and such cases cited by the appellant as

Cunnach vs. Edwards, 13 *Repts.* (ch) 334.

See as to ownership—

Brown vs. Dale, 9 *Chancery Div.*, (L. R.) 78.

Other absolute impediments to the claim of appellants are, the earnings and accumulations of the society, and its profits from trade.

These are not accretions to donations, but they constitute, probably, nine-tenths ($\frac{9}{10}$) of its wealth.

Take an applicant's ancestor who withdrew in 1820 or thereabouts. How would you now define his share?

Then there were, say, 300 members. Now, eleven. There have been one thousand members since. Into how many shares divide it?

What will you do with all members joining since?

What with the heirs of each?

What property will you divide?

Certainly not the property afterward contributed or earned by new members.

What equity could the withdrawing one have to that?

The proper solution is the one Judges Greer and Irwin reached, that the members who at the time comprise the society *own all its property.* They always and at all times have exercised such ownership. In 1832, in the Count De Leon conspiracy, they actually gave to the Count and his following large parcels of land and a large amount of money. They have constantly sold and given away and otherwise used the property. To hold that the descendants of deceased ancestors are part owners in the property is to go in the face of all the agreements and to disregard the expressed provisions quoted from the agreements of 1805, 1827 and 1836.

See Judge Greer's and Judge Irwin's opinions in Nachtrieb vs. Harmony Society, cited *supra.*

Also, opinion of the Supreme Court of U. S. in Goesele vs. Bimeler et al., 14 *Howard*, 609.

Also, opinion of McKenna, J., in Speidel vs. Henrici, cited *supra.*

THE ARGUMENTS MADE AND AUTHORITIES CITED BY THE APPELLANTS BEFORE THE MASTER AND IN THE COURT BELOW BEARING ON THE QUESTION OF THE TITLE THE HARMONY SOCIETY HAS TO ITS PROPERTY.

We have considered and commented upon the complete manner in which the agreements of the society answer the averments of the appellants, that the society's title is only a base fee—or resulting trust—or that the society could not take title to property—or that the title taken offends the rule as to perpetutes. But in immediate connection therewith we desire to print a portion of the Master's report bearing on these questions. It refers to all the authorities, and is a complete refutation of the appellant's views.

Is the Property of the Society Held on Any Trust.

The plaintiffs, in the sixth paragraph of their bill, aver that the money and real estate from those who became members of the society were received and accepted by George Rapp and his successors in trust, and for the furtherance of the tenets and beliefs upon which the society was founded. This last clause is denied by the defendants in the sixth paragraph of their answer, but it is there admitted that all the goods and properties placed in the names of the agents and trustees of the society were, and are, held in trust for the Harmony Society, but always subject to the terms of the written contracts between the members of the said society. But in the twenty-sixth paragraph of the bill the plaintiffs deny that the property of the society has ever been impressed

with a trust, as being contrary to public policy and void in law or equity.

It is difficult to determine from these contradictory averments of the plaintiffs what their position on the question is. There is no other evidence in the case to show how the property was or is held than the agreements of the members in evidence hereinbefore set forth, and the subsequent agreements of April 30th, 1890, and December, 1892, also in evidence,—in which the former agreements are affirmed and continued,—and the testimony of all the witnesses who testified on the subject, that all the property was held by the trustees in trust for the society as joint property.

Claims of the Appellants.

The counsel for the plaintiffs, however, claim, in their argument that the grants in the agreements of 1805 and 1827, if they were to the society were to an unincorporated association, which was incapable of taking, and therefore void; that if George Rapp be considered a trustee they were still void, for the reason that a grant to a trustee of an unincorporated voluntary association is void, and that they violate the rule against perpetuities; and also for the further reason that the associates of George Rapp were not named and could not be ascertained.

The first article of the agreement of 1805 is as follows:

> "We, the subscribers, on our part and on the part of our heirs and descendants, deliver up, renounce and remit all our estate and property, consisting of cash, land and chattels, or whatever it may be, to George Rapp and his associates in Harmony, Butler County, Pennsylvania, as a free gift or donation, for the benefit and use of the community there, and bind ourselves on our part as well as on the

part of our heirs and descendants, to make free renunciation thereof, and to leave the same at the disposal of the superintendents of the community as if we never had nor possessed it."

And the first paragraph of the agreement of 1827 is as follows:

"We, the undersigned, for ourselves, our heirs, executors and administrators, do hereby give, grant and forever convey to the said George Rapp and his associates, and their heirs and assigns, all our property, real, personal and mixed, whether it be lands and tenements, goods and chattels, money or debts due to us, jointly or severally, in possession, remainder, or in reversion or expectancy, whatsoever and wheresoever, without evasion, qualification or reserve, as a free gift or donation for the benefit and use of said association or community; and we do bind ourselves, our heirs, executors and administrators to do all such acts as may be necessary to vest a perfect title to the same in the said association, and to place the said property at the full disposal of the superintendents of said community without delay."

Uncertainty of Grantees.

The objection that the associates of George Rapp were not named or known, is not good. He is named and known, and capable of taking and holding the title, either for himself or in trust.

The agreement itself shows that by "his associates" those who joined in the agreement were intended; and although, through the loss of the agreement, their names are not now known, they were known at the time of its execution, and for many years after.

Who the associates were, and that they were the persons who, by joining in the agreements, became associates of

George Rapp and members of the society, is shown by Exhibit No. 86, being the deed from Frederick Rapp for himself as attorney in fact of George Rapp and his associates to Abraham Ziegler, of Lehigh County, for the lands of the society in Butler county. This deed was offered in evidence by the defendants, for the purpose of showing who the members of the society were, and as part of its history. (See testimony, Record vol. III, 543 and 577). The parties to this deed are stated in it, as follows:

> "This indenture, made the sixth day of May, in the year of our Lord one thousand eight hundred and fifteen, between Frederick Rapp, of Harmony, County of Butler, and Commonwealth of Pennsylvania, for himself and as agent and attorney in fact for George Rapp and associates, of Harmony aforesaid, for the purpose specially constituted and appointed by letters of attorney bearing date on the fourteenth day of June, in the year of our Lord one thousand eight hundred and fourteen, duly signed, sealed and acknowledged by the said George Rapp and Christina, his wife, Rosina Rapp, Johanna Rapp, John L. Baker, William Liller"—and four hundred and fourteen others, naming them—"*being the associates of the said George Rapp above mentioned*, of the first part, and Abraham Zeigler, of Lehigh county, in the Commonwealth aforesaid, of the second part, witnesseth," &c.

Among those named in this deed as associates of Rapp and signers of the power of attorney, appear the names of several of those persons through whom some of the plaintiffs claim.

Rule as to Perpetuities.

The objection that these grants violate the rule as to perpetuities is also unfounded. A perpetuity is defined by Swayne, Justice, in Auld vs. Washington Hospital, 95 *U. S. R.*, 312, as

> "A limitation of property which renders it inalienable beyond the period allowed by law. That period is a life or lives in being and twenty-one years more, with a fraction of a year added for the term of gestation in posthumous births."

And in *Perry on Trusts*, sec. 377, it is said:

> "A perpetuity is a future limitation, whether executory, or by way of remainder, and of either real or personal property, which is not to vest until after the expiration of, or will not vest within the period prescribed by law for the creation of future estates and interests, and which is not destructible by the persons for the time being entitled to the property subject to the future limitations, except with the concurrence of the individual interested in that limitation. If such person is not yet in being, as he may not be after an extended period, of course the estate cannot be conveyed, even if all the world should join in the deed."

There is nothing in these grants to create a perpetuity. They are absolute grants, in fee simple, to take effect immediately, for the use and benefit of the association generally, not for any particular purpose, but for any use they may see fit to make of it. There is no future estate sought to be created or limited, and no provision restraining alienation. It is true the property may be held indefinitely by the trustees or the society, as any property held in fee simple; but if it should be to the interest or advantage of the society to part with it, there is nothing in these grants to prevent the conveyance or that would require that any third party should consent to, or join in, the deed.

In Geosele vs. Bimler, 14 *Howard*, 590, the court had under consideration the articles of association of the Separatist Society of Zoar, which were similar to the agreements in this case. In delivering the opinion of the court, McLean, J., on page 608, says:

> "Do the articles constitute a perpetuity? We all think they do not. They provide for the continuance of the society for an indefinite period of time, in the exercise of the discretion of the members. The majority of the members may require a sale of the property and break up the association. In fact the majority governs by the election of its officers. Members may be expelled from the society and new ones admitted under established rules. Whilst the society has the means of perpetuating its existence, it may be said to depend for its continuance on the will of a majority of its members."

WAS THE SOCIETY INCAPABLE OF TAKING AS GRANTEE?

The other claim of the plaintiffs is, that if the grants were directly to the society, they were to an unincorporated association, incapable of taking, and therefore void; and if they went to Rapp in trust for the society, they were equally void, for the same reason.

These grants are of both personal and real property, and there can be no doubt that unincorporated societies or associations are capable of taking, directly, and holding personal property in the name of the association. It is done every day, and their right is not questioned. The rule applies only to real estate. All the cases cited by the plaintiffs to show that a grant to an unincorporated society is void, are cases of grants of land or rights in land only, made directly to an unincorporated body; not to trustees for it.

Voluntary associations may be *cestuis que* trust of personal property.

Perry on Trusts, sec. 63.

But although a voluntary, unincorporated association cannot take title to real property in their society name, as they are not in law recognized as persons, it may be held for their

use and benefit by trustees, and their right to the enjoyment of the property be secured in that way.

Liggett vs. Ludd, 19 *Oregon*, 89.

Second Congregational Society vs. Waring, 24 *Pick.*, 304.

Theological Seminary vs. Childs, 4 *Paige*, 423.

Byam vs. Beckford, 140 *Mass.*, 31.

Crawford vs. Gross, 140 *Pa. St.*, 297.

In Second Congregational Society vs. Waring, 24 *Pick.*, 304, one Packard had conveyed certain land to himself, Haward, and twenty-five others, "who have associated together and have entered into a contract as proprietors for the purpose of building and erecting on said lot a meeting-house for public worship," "to have and to hold said lot to said proprietors and their heirs and assigns, and to each and every person who may hereafter become the lawful owner and proprietor of a pew in said house to be built and erected thereon, and which may and shall be afterwards rebuilt thereon by said proprietors and their successors, to the use and behoof of said proprietors for said purpose, and of each and every lawful owner and proprietor of a pew or pews in the meeting-house to be built and rebuilt on said lot forever."

In their opinion, the court say :

> "We are all satisfied that the deed of the *locus in quo* from Packard to Haward and others operated to convey the premises to them for the use of the proprietors therein named and of each and every lawful owner and proprietor of a pew or pews in the meeting-house to be built and rebuilt on said lot forever. It is no valid objection that the use was shifting. The grantees, who were capable to take, did take, upon the execution of the deed to them, and the use would legally shift to those who should afterwards become pew-holders. Multon's case Moor, 96, *Pl.* 240 : Where A makes a feoffment to B to

> the use of B and his wife that shall be, and B afterwards marries; there the use vested in B, at first, but upon the marriage shifted to himself and wife."
>
> "It is no valid objection that the limitation of the use was to depend upon the contingency, that the *cestue que use* should become a pew-holder. When that event happened the use shifted to him and others who held the estate before; and those who so held pews were tenants in common. *Sanders on Uses*, 131."

The following cases, cited by the plaintiffs, do not support their position:

In Sanderson vs. White, 18 *Pickering*, 328, the question was as to who were visitors of a charitable trust created by will.

Hemlock vs. Westbrook, 9 *Johnson*, 73, was an action of trespass for cutting wood. The defense was a proviso in plaintiff's deed, "that the inhabitants of Rochester should be allowed to cut and carry away wood." The court held that as the inhabitants of Rochester were not incorporated, and incompetent to take an estate by that name, the reservation to them in a deed to a third person was void.

Jackson vs. Corry, 8 *Johnson*, 385, was an ejectment in which the defendants claimed under a deed to "the people of the county of Otsego." The court said, "The people of the county of Otsego had not a capacity to take by grant. They were not a corporate body known in the law. * * * ." A grant, to be valid, must be to a corporation or some person certain must be named who can take by force of the grant, and can hold either in his own name *or as trustee.*

Perkins, sec. 55, 2 *Johns. Cases*, 324.

In Sloane vs. McConaghy, 4 *Ohio R.*, 157, it was held that a bond to the commissioners of the county, no commissioners being elected when it was made, was void.

Briggs vs. Mansfield, 10 *Pick.*, 363, was a claim of a right of pasturage, in which it was held that a grant of right of common to the inhabitants for the time being (not incorporated) of a certain territory conveyed no right to persons not inhabitants at the time of the grant.

German Land Association vs. Scholler, 4 *Minn.*, 331, does not decide that lands could not be held in trust for an unincorporated association, but only that the declaration of the trust in that case was too vague and indefinite under the Minnesota act in relation to trusts, and was therefore void.

It was a complaint to compel the execution of a deed. Defendant being the equitable owner of lands, the legal title to which was in the United States, executed a conveyance of the land to Albert Tofel and others named, who were trustees of the association, in trust for the German Land Association (which was not incorporated) and for the several use and benefit of the several members thereof according to their respective interests as the same might thereafter be determined by division or otherwise. Defendant had afterwards obtained the legal title and refused to convey.

It was a proceeding to compel a third party to carry a trust into execution, or rather, to create a trust, not to declare void and set aside a trust that had been recognized, in operation, and acted upon, for many years.

In its opinion, the court say:

> "One question in the case is whether the beneficiaries are sufficiently described to enable the court to execute the trust. Irrespective of the provisions of our statutes, it would seem that the trust could not be sustained. Courts of equity carry trusts into effect only when they are of a certain and definite character. If, therefore, a trust is clearly created in

a party, but the terms by which it is created are so vague and indefinite that the courts of equity cannot clearly ascertain the objects or the persons who are to take them, the trust will be held entirely to fail. 2 *Story, Eq. Juris.*, 969 a; Wheeler vs. Smith, 9 How., *U. S. R.*, 55."

"In declaration of uses certainty was required, and that especially in three things: in the persons to whom, in the lands, etc., of which, and in the estates by which the uses were declared; and if there was a want of certainty in either of these, the declaration was not good, and a trust is now merely what a use was before the statute of uses."

"Our statutory provision removes any doubt that might otherwise be supposed to exist. In the creation of a trust of this character, it is required that the trust shall be fully expressed and clearly defined on the face of the instrument creating it." * * *

"The German Land Association was not by law invested with any legal existence, and the trust deed gives no intimation as to who the persons were associated under that name. The deed was therefore void."

In the present case, the objects of the trust are set forth in the agreements, and the beneficiary is the community or society formed by the agreement, and composed of the persons joining in and signing the agreement. The conclusion of the agreement of 1827 is, "In witness whereof and in testimony that the undersigned have become members of the said community upon the conditions aforesaid they have hereunto set their hands and seals." This trust would, therefore, be valid under the above decision, as all that is required, in the opinion, is shown in the agreement creating the trust.

Position of Appellants if Good Would Defeat Their Claim for Relief.

But if the agreements of 1805, 1827 and 1847 were void as creating a perpetuity, or on account of the grantees being in-

competent to take—being Rapp and his associates, the associates being unknown; or on account of the association being unincorporated and therefore incompetent to take; or on account of the trust sought to be created by the deed being void as in favor of an unincorporated society incompetent to take, and for that reason no title to the property sought to be conveyed passed to the grantees—or the property reverted to their grantors or their heirs—then the plaintiffs can have no claim to it at this time. If the grants are void now, they were void at the time they were made, and the title of the property and the right to its possession either remained in the grantors or immediately reverted to them, and their right of action occurred for the recovery of it. But the last of these agreements was signed by the ancestors of the plaintiffs more than fifty years ago, and if any property was contributed by them, it was contributed at that time, and possession then taken and since held by the trustees or the society as the joint property of the society, that is, adversely to the plaintiffs; and, under the decision of Spiedel vs. Henrici, 120 *U. S. R.*, 377, the plaintiffs and their ancestors have, through their laches and the lapse of time, lost all rights or interest they might have had in the property, on these grounds. The question whether the grants and the trust were valid or not, therefore, is immaterial in this case. If the plaintiffs have any interest in the property of the society, it can only be through these agreements and the trust thereby created.

But again, it is alleged in the second paragraph of the bill that the three thousand acres of land of the society, at Economy, Beaver County, were *purchased* by it in 1825; and it appears, from the evidence, that the lands at Beaver Falls were also *purchased*. None of the deeds for any of the lands held by the society were in evidence, nor was it shown from whom any of it was purchased; but it was shown that the

legal title of all the lands acquired by the association since its organization was held, during the life of George Rapp, either by him, or by Frederick Rapp, in trust for the society; and after his death, by the several trustees upon the same trust. If these lands had been conveyed to the society by any of the ancestors of the plaintiffs, or by any other member of the society, it is to be presumed that the plaintiffs would have shown that fact as a part of their case, to entitle them to the reversion or resulting trust claimed by them. The burden was on them. It is to be presumed that the deeds are on record, or at least there must be some evidence of title in the trustees which might have been produced. Not having shown, or attempted to show, that the title of these lands was derived from any of the persons through whom the plaintiffs claim, or from any other member of the society, and it appearing that they had been purchased, it must be concluded that they were purchased from some person, not a member of the society. If this is the case, and it was conveyed to George Rapp, or Frederick Rapp, in trust for the society, and that trust was void for the reasons alleged by the plaintiffs, how are they entitled to any interest in it? If the trust was void, either the title would not pass out of the grantors, or it would go to the grantee, clear of the trust. The claim that the trust was void proves too much for the plaintiff's case. If they have any interest in property purchased with money of the society, it can only be through the trust—not in opposition to it.

Is the Estate Created a Base Fee or Resulting Trust.

The plaintiffs claim that upon the dissolution of the society the purposes for which the property was contributed to the association have entirely ceased and failed, and the property must revert to the grantors or their heirs, on the ground that

the grants of the property contained in the agreements created a limited or base fee, only, in the property, or a resulting trust to the grantors or their heirs.

The grants are contained in the agreements of 1805 and 1827, which are substantially the same, and are agreements for the formation of an association or community; the only difference being that the agreement of 1827 is more fully expressed. The granting clause is contained in the first article, and, as translated from the original German by Mr. Fleischman—who was agreed upon by the parties for that purpose—is as follows:

> "ARTICLE 1. We, the undersigned, for ourselves, our heirs, executors and administrators, do hereby give, grant and forever convey to the said George Rapp and his associates and to their heirs and assigns all our property real personal and mixed, whether it be lands and tenements, goods and chattels, money or investments due to us, jointly and severally, in possession or in remainder, or in expectancy, whatsoever and wheresoever without exception, evasion or reserve, as a free gift of donation for the benefit and use of said association or community, and we do hereby bind ourselves, our heirs, executors and administrators to do and perform all that may be necessary to vest a perfect right and title to the same in the said association, and to place the said property at the full disposal of the superintendent of the said community without delay."

In the second and third articles the subscribers covenant and agree that they and their families will labor for the benefit of the community, and will make no claims for compensation for the same.

This does not create a limited or a base fee. The property is not granted for any particular purpose, or to be used in any specified manner, or for any special object, but generally "for the benefit and use of the said association or com-

munity, and is to be placed at the *full disposal* of the superintendent of the community." In the agreement of 1805 it is written: "and to leave the same at the disposal of the superintendents of the community, as if we never had nor possessed it." This is said of personal as well as real estate; o money as well as lands; of property that would necessarily be destroyed or parted with in any use made of it, as well as rea estate, and the terms used are applied to both. There is no restriction on the use of either, but both are to be at the full disposal of the superintendent. This would include the power of sale. It could be used in any manner that would be beneficial to the society. If it would be to the advantage of the community to sell it, it might be sold.

Wherever words in a conveyance are relied upon as creating a condition subsequent, so as to create a base or determinable fee, they must not only be such as would of themselves create a condition, but must be so connected with the grant as to qualify or restrain it. To make the estate conditional the words must clearly show such intent.

Methodist Church vs. Old Columbia Ground, 103 *Pa. St.*, 608.

A conveyance reciting that the property is to be used for a certain purpose, without more, does not create a condition or base fee.

Wilkesbarre vs. Wyoming Society, 134 *Pa. St.*, 616.
Harris vs. Shaw, 13 *Ill.*, 456.
Cook vs. Trimble, 9 *Watts*, 15.
Kerlin vs. Campbell, 15 *Pa.*, 500.
Seebold vs. Shitler, 34 *Pa.*, 133.
Seller's Church Petition, 139 *Pa. St.*, 61.

The plaintiffs, in support of their position that a conditional or base fee was created in this case, have cited the following cases, viz: Scheetz vs. Fitzwater, 5 *Pa. St.*, 126; Kirk vs. King, 3 *Pa. St.*, 436: Vail vs. Long Island, 106 *N. Y.*, 283; Adams vs. Logan County, 11 *Ill.*, 336; Universalist Society vs. Boland, 155 *Mass.*, 171; Church vs. Manning, 72 *Md.*, 116; Easterbrook vs. Tillinghast, 5 *Gray*, 17; Board vs. Edson, 18 *Ohio*, 226; Gebhart vs. Reeves, 75 *Ill.*, 301; Reed vs. Stauffer, 56 *Md.*, 226; Carmack vs. Edwards, 13 *Reports Chy*, 334; Hopkins vs. Grimshaw, and Slegel vs. Lauer, 147 *Pa.*, 236.

In all these cases except Slegel vs. Lauer the limitation of the estate was clearly expressed, showing the intention to convey a base or qualified fee only, and that upon the termination of the specified, particular use, the property should return to the grantor. The property was conveyed for a specified purpose and for *no other use*, or *for no other use whatever*, or was granted *for so long as used* for the purpose specified, or to be *used solely* for the specified purpose.

In Carmack vs. Edwards, 13 *Reports Chy.*, 334, much relied on by the plaintiffs, a society was formed for the purpose of raising, by subscription of members and by fines and forfeitures, a fund for the relief of deceased members of the society. Rules were adopted, providing for the management of the society. Rule 16 provided that the money arising from the subscriptions, fines, forfeitures and otherwise, should be invested by trustees in the manner therein provided. Rule 35 provided for the payment of annuities to widows of deceased members. Rule 45 provided that all fines and forfeitures should form part of the funds, and should be *applied solely* for the purpose provided by the rules, and towards defraying the expenses of the management of the

society. The last surviving, ordinary member, T. H. Edwards, died in 1878; the last person entitled to an annuity died in 1892. The fund then belonging to the society was 1,246 pounds sterling. This was claimed by the crown as *bona vacantia*, by the representatives of Edwards as last surviving member, by S. Clark for the representative of the other members of the society.

Chitty, J., in his opinion, says:

> "When a man provides a fund by way of a trust for the payment of a specified annuity to his widow during her life, and makes no further declaration of trust affecting the fund, the beneficial interest in the fund, or so much of it as is not required for the payment of the annuity, results to himself. The same doctrine would apply to several persons agreeing to provide such annuities for their widows; there would be an ultimate trust in their favor when the purposes of the fund had come to an end. Nor can I see how any difference could justly be made by reason of their raising by common agreement such a fund in different but prescribed proportions among themselves."

And he held that the doctrine of resulting trust applied, and that the fund should be distributed among the representatives of the ordinary members in proportion to the amounts contributed by each member to the funds of the society.

In Slegel vs. Lauer, 148 *Pa. St.*, 236, a strip of land adjoining a county jail was conveyed to the county, reserving to the grantor and his heirs the free use of the property for an open yard or garden—habendum "to and the use, interest and purpose following, that is to say, to be and remain forever hereafter unbuilt on in order to prevent any prisoner or prisoners making their escape over the said prison walls by reason or means of any building erected contiguous to said

walls." The jail had been removed to another place. The court, in the opinion, says:

> "In view of all the circumstances, there seems to arise from the express declaration of purpose a necessary implication of the exclusion of every other. It is a rule in the construction of a statute, pleading, contract, or will, or other instrument, that what is clearly implied is as much a part of it as what is expressed. U. S. vs. Babitt, 1 *Black*, 61, Hanchett vs. Weber, 17 *Ill.*, App., 114. The instrument under consideration is therefore to be treated precisely as if it contained a declaration that the grant was for the purpose mentioned *and no other*. But when an estate is conveyed in fee for a specified purpose 'and no other,' the fee is a base fee, determinable upon the cessation of the use of the property for that purpose. Kirk vs. King, 3 *Pa. St.*, 436. Scheetz vs. Pittswater, 5 *Pa. St.*, 126."

Nor is there any resulting trust created by the grants:

> "If a conveyance has been made upon a valuable consideration, there can be no resulting trust to the grantor, as the payment of a valuable consideration imports an intention to benefit the grantee in case the trust declared fail, or are imperfectly declared, or do not take effect for any other reason."
>
> *Perry on Trusts*, sec. 151.

Although these grants and covenants are called, in the agreements, gifts or donations, they are not without a consideration and a very valuable one. In consideration of them, the donors become members of the community, thus partaking in the benefits derived from the property contributed, and they and their families are to be supported and provided for by the community during life, if they so long remain in it, as well during sickness or inability to labor as in health; or if they die or leave the society, leaving a family, it is to be supported and cared for as long as it remains in the community.

The fourth and fifth articles set forth the considerations to be received by the donors, and are as follows:

> "ARTICLE 4. In consideration of these presents the said George Rapp and his associates do by these presents receive the undersigned jointly and severally as members of this community, whereby each of them is entitled to attend all religious meetings, and to receive not only for themselves, but also for their children and families, all such instruction as may be required for their temporal good and their eternal welfare."
>
> "ARTICLE 5. The said George Rapp and *this community* further promise each of the undersigned and their families to provide them with all the necessaries of life, as clothing, food, drink and lodging, &c., for themselves and their families. And this promise is not limited to their days of health and strength, but when any of them shall become sick, infirm or otherwise unfit for labor, the same support and maintenance shall be provided as before, together with such medicines, aid, care and attendance and consolation as their condition may reasonably require. And if at any time after they have become members of the association, the father or mother of a family should die, or should otherwise be separated from the community, leaving their family behind, such a family shall not be left as orphans nor destitute, but shall be entitled to the same rights and maintenance as before, as long as they remain in the association, in sickness as in health, and to such extent as their circumstances may require."

It is not alleged by the plaintiffs in their bill, or at the hearing, that the community had ever failed to fulfill its part of the contract towards any of their ancestors or persons through whom they claim, and it must, therefore, be taken for granted that it has not failed to do so, and that the parties through whom the plaintiffs claim have received the whole of the consideration contracted for in the agreements. And

the plaintiffs can have no equitable or other claim to have a resulting trust in the property contributed.

> "There could be no resulting trust, for every part and parcel of the grantor's estate, legal and equitable, present or prospective, had passed from him and *was paid for.* Nor was the estate granted a base fee. It was unincumbered with conditions or limitations. The ancestor received a full consideration for it, and the plaintiffs cannot rescind the bargain."
>
> Kerlin vs. Campbell, 15 *Pa.*, 500.

The grant in the present case, in the agreement of 1805, is, "As if we never had nor possessed it;" and in the agreement of 1827, "All our property, real, personal and mixed, * * without evasion, qualification or reserve, * * and to place the said property at the full disposal of the superintendents of said community without delay."

It is evident from these expressions that there was no intention to create a base fee or a resulting trust. And deeds are to be construed most strongly against the grantor.

But in this case there is another reason why there can be no resulting trust or reversion in the plaintiffs. The ancestors of the plaintiffs never contributed any property to the society or to Rapp, in trust for it; and for their labor they received the consideration agreed upon and released all further claim on account of it. The plaintiffs can have no reversion or resulting trust in the property contributed by others than their ancestors. There is no such provision in the agreements.

NO ONE OF APPELLANTS HAS PART INTEREST IN PROPERTY OF THE SOCIETY.

We are now ready to consider the question, ante page.

Is either one of the plaintiffs a part owner in the property, real or personal, of the Harmony Society, and would he be, was the society dissolved, entitled to any part thereof?

The answer is—*he is not and he would not.*

No one of the plaintiffs *is* a member of the Harmony Society.

No one of the plaintiffs ever was a member of the Harmony Society.

No one of the plaintiffs is the executor or administrator of any deceased member of the society.

No one of the plaintiffs could obtain a decree compelling the society to admit him as a member to the enjoyment of the rights of the deceased ancestor.

The claim of each plaintiff is because he is of lineal or collateral descent the heir at law, or next of kin, of some one now dead, who, in his lifetime, was a member.

We have demonstrated—

(1) That no one of the members, even while the membership continued, had any title to any part of the property of the community. He had no such individual interest in or right to any of the property as enabled him to sell it, or transfer it to another, or take it to himself, or have partition

of it. His entire right was solely and only as a member of the community, and was personal to himself.

(2) His withdrawal or death, terminated all his rights as a member of the community, and hence ended all right on his part in any way to intermeddle with the property of the community.

This was distinctly ruled in Schriber vs. Rapp, 5 *Watts*, 358, and it will be noted that case arose prior to the agreement of 1836, and was ruled on the contracts of 1805 and 1827.

(3) Prior to the agreement of 1836, when one who had contributed property to the joint or common fund, withdrew from the society, he was entitled to the value of his contribution, without interest, payable in one, two or three years. This was a personal right to be enforced by him individually, and after his death by his executors or administrators—not by his heirs at law or next of kin.

No question on the right to recover any contribution arises in this case. There is no proof of such contribution by any of the ancestors of plaintiffs, and if there had been this bill is not founded on any such right, and if it was so founded the personal representatives, *i. e.*, executor or administrator, would be an indispensable party.

This bill is filed on the ground that the Harmony Society is now dissolved.

Not that it is in existence, and may be sued, but, that it has been dissolved.

The Agreement of 1827, as to a return of value of contributions, is from the society living and in existence to a withdrawn member.

It is not this case which asks for a distribution of property because of dissolution of society.

(4) Under the Agreement of 1836 the property of the society was declared to be

"joint and indivisible stock."

That is, it was joint which gave to the survivors the rights of all, and it was indivisible, because no one of all had the power to divide it.

This was a mere definition in accurate language of what the Agreement of 1805 and 1827 provided.

One and all denied to the individual a separate property right in any of the property of the society, and each limited the individual to his joint right to the common property with all the other members constituting the society, and recognized his individual right only in the covenants and agreements which provided him school and church and food, clothes, etc.

In one and all of them withdrawal, or death, terminated the membership, and left the departing one with no further interest in, or right in, the society, or its property.

The agreements all contain mutually dependent covenants. The joining member is to render obedience and labor, etc., and the society is to find clothes, etc. Evidently, if the member will not perform his covenant, he cannot ask the society to perform its covenants. And then his continued

presence in the society is necessary to enable the society to feed, clothe and house him. When he dies or withdraws it is no longer possible to do it.

The member's interest in the property was only as one of the joint community, and not as an individual. In the property he had no direct interest. By the agreement he expressly renounces all such interest. His sole claim to the property is because he was adopted a member of the society. When he ceases to be a member, whether by death or withdrawal, the right which arose wholly by reason of the membership, terminates and ceases, much in the same manner as if he was a citizen of a village, or a member of a church, and left the same.

Death, or withdrawal from the society, forever terminated and ended all the so-called property rights of the adopted one, and all his rights to call for the performance of the covenants in the agreements to give him food, clothing, sustentation, etc.; his descendants gain no property right whatever.

It will be noticed that all of the ancestors of the plaintiffs either

(1) Died while still members of the Harmony Society; or,

(2) Died after they withdrew from membership.

Now, the withdrawing was a voluntary act on their part, which cut them off from the society. One who died after he had withdrawn, and was still *in contumacium*, surely could

impart no more right or title or claim to the company's property than if he had remained in the society, and had not withdrawn, If he could, the parable is outdone, for the slothful servant in that received only an equal sum with him who had labored all the day, while, in the case suggested, he would receive much more.

Death, whether while still a member, or after withdrawal, forever settled the personal, individual claim and right of the deceased as a member of the society, and he has nothing—he leaves nothing he can transmit to his heirs.

PERSONAL RIGHT OF MEMBER NOT TRANSMISSIBLE.

In each of the agreements the language is more or less specific, but always clearly stating the same idea—that an individual had no personal right or claim which he could sell or give away, or, in the case of his death, transmit to any other person, as to any of the covenants of the agreement, or any of the rights which, as a member of the society, he had in or to the common property of the society.

Thus, in the agreement of 1805, all jointly, not only on their own part, but,

> "on the part of our heirs and descendants, deliver up, renounce and remit all our estate and property, * * to George Rapp and his associates, * * as a free gift or donation, for the benefit and use of the community, and bind ourselves on our part, as well as on the part of our heirs and descendants, to make free renunciation thereof, and to leave the same at

> the disposal of the superintendents of the community, as if we never had nor possessed it."

Thus, again, in case of withdrawal, all agreed—

> "never to demand any reward, either for ourselves or children or those belonging to us, for any of our labors or services rendered, but whatever we jointly and severally shall or may do, we will have all done as a voluntary service for our brethren."

Then again, in case of a withdrawal, George Rapp and his associates,

> "promise to refund him or them, the value of his or their property brought in without interest,"

in installments, or, if nothing was brought in, and he departs openly, a donation shall be given.

The refunding, or donation, is only in case of voluntary withdrawal, and then the amount refunded is the value of the original contribution, without interest. This is the individual contribution that the party withdrawing had made. He is given nothing out of the common fund contributed by others. He is refunded only the value of that which he originally put in. As we have seen, it was a personal claim, to be enforced by personal action, which, on his death, would go to his executors, or administrators, and would not descend to heirs at law. He might, under that agreement, sue the covenantors—Rapp and his associates—if they did not refund the value. This was his only right. He could not have filed a bill for the dissolution of the society and the partition of its property.

The agreement of 1827 made a joint and several covenant as follows :

> "We, the undersigned, for ourselves, our heirs, executors and administrators, do hereby give, grant and forever convey, to the said George Rapp and his

> associates, and their heirs and assigns, all our property, real, personal and mixed, * * * without evasion or qualification, or reserve, as a free gift or donation, for the benefit or use of the said association or community; and we do hereby bind ourselves, our heirs, executors and administrators to all such other acts as may be necessary to vest a perfect title to the same in the said association, and to place the said property at the full disposal of the superintendents of the said community without delay."

Then, in case of withdrawal, each and all covenant,

> "that we will never claim or demand, either for ourselves, our children, or for any one belonging to us, directly or indirectly, any compensation, wages or reward whatever for our or their labor or services rendered to the said community, or to any member thereof; but whatever we or our families jointly or severally shall or may do, all shall be held and considered as a voluntary service for our brethren."

Then Rapp and his associates again agree, in case of withdrawal,

> "to refund to him or them the value of such property, without interest, as he or they may have brought into the community."

payable in installments.

The agreement of 1836 reiterates and approves of the agreements of 1805 and 1827, except that portion of the agreement of 1805 and 1827 which promises to refund to withdrawing members the value of the property contributed. That portion of the agreement of 1827 was rescinded; the members of the society, among other things in this agreement of 1836, saying:

> "The said 6th article is entirely annulled and made void, as if it had never existed; all others remain in full force as heretofore."

Then follows a formal declaration in specific words of what was already in truth contained in the two previous agreements, such declaration being as follows:

> "All the property of the society, real, personal and mixed, in law or equity, and howsoever contributed or acquired shall be deemed, now and forever, joint and indivisible stock. Each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in lands, goods, money or labor; and the same rule shall apply to all future contributions whatever they may be."
>
> "Should any individual withdraw from the society, or depart this life, neither he, in the one case nor his representatives in the other, shall be entitled to demand an account of said contributions, whether in land, goods, money or labor, or to claim anything from the society as matter of right. But it shall be left altogether to the discretion of the superintendent, to decide whether any, and if any, what allowance shall be made to such member, or his representatives as a donation."

The Agreement of 1847 approves the Agreement of 1827, excepting Section 6th, and also the Agreement of 1836.

If plain words, carefully selected and properly placed, can make certain any one thing, it would seem that these agreements made certain the proposition that death, or withdrawal, and especially when the withdrawal was followed by death, terminated, and forever ended all the rights of the withdrawing or dead member, and as all these rights were personal, surely nothing could go to his heirs at law.

The authorities seem to be uniform in approving the above proposition, and this in whatever state and by whatever court the matter has been considered.

DECISIONS OF THE COURT THAT DEATH OR WITHDRAWAL TERMINATES ALL INTEREST OF THE WITHDRAWING OR DEAD MEMBER AND HIS HEIRS AT LAW ACQUIRE NO INTEREST WHATEVER.

The cases which have arisen by withdrawing members and others against the Harmony Society are as follows:

First comes the case of Schriber vs. Rapp, 5 *Watts*, 351, decided in 1836.

The Supreme Court of Pennsylvania, in Schriber vs. Rapp, considered the agreements of 1805, 1821 and 1827, only, as the case arose prior to the agreement of 1836, and is, therefore, specially significant of the reasoning hereinbefore urged, to wit, that the same result followed under the agreements of 1805 and 1827 as under the agreement of 1836.

In this case Peter Schriber, one of the members of the Harmony Society, died, and his administrator brought an action of account render against the society. It was proven that the decedent had contributed largely to the society, but the case was decided against his claim. The Common Pleas Court held, page 359:

> "The articles of association executed by the plaintiff's intestate *are a complete bar to the plaintiff's recovery in this case*, unless the plaintiff's intestate has had a fraud practiced upon him, and been induced to sign them by fraud and imposition."
>
> * * * * * *
>
> "There is nothing in the articles of association given in evidence that renders the agreement unlaw-

ful or void; nothing in them inconsistent with constitutional rights, moral precepts, *or public policy.*"

Gibson, Chief Justice, delivering the opinion, among other things said, in speaking of the Harmony Society, that it was not a partnership; and then, speaking and defining the rights of the members, he said:

> "At the period of initiation, the neophyte surrenders his worldly wealth to the society, reserving to himself but the contingent right of resumption in the event of his secession, * * It is supposed, however, that as the intestate had power, by the articles, to secede from the society and take out of it whatever he had brought into it, *the successor to his personal rights may exercise it as his representative. Such, however, are not the terms of the articles;* nor would a posthumous exercise of the power consist with the disposition he thought fit to make by dying in fellowship. An exercise of it by the administrator of one dead without kindred would wrest the property from the society, only to give it to the State by escheat. The right of secession, therefore, *is intransmissible;* and were it not, the intestate's release would be a bar."

Nachtrieb vs. Harmony Society, 3 *Wallace, Jr.*, 66, was decided by the Circuit Court of the United States in 1852, having been brought to No. 28 Nov. Term, 1849, in Equity.

That was a bill in equity, in which Nachtrieb alleged he had been a member of and worked for the society from 1819 to 1846, when he had been unlawfully expelled from the society, and prayed for an account of the sums due him for labor and of his share of the property of the association.

The Circuit Court—Grier and Irwin, Justices—held that Nachtrieb was *unlawfully expelled*, and he was therefore entitled to his full share of all the property the society owned. The members being then 321, his share was the 1-321.

Grier, J., in his opinion, 3 *Wallace, Jr.*, 82, held that

> "each member had an equal right to and interest in their common property, and (each) had estopped himself *from even setting up any claim for property* or labor contributed to the common stock in case of a voluntary withdrawal from the society."

In a concurring opinion, filed February 8th, 1852, Irwin, J., elaborately examines the different agreements, and arrives at the conclusion that the common property of the society belonging to the society, and if at any time it was dissolved it would be divided *among those who are the members when such dissolution occurred.* That these members could dissolve it and divide the property, and no one else except members could share in the division. That the unlawful expulsion by the society of Nachtrieb entitled him to his share of the common property.

The case was appealed to the Supreme Court of the United States, and is reported as Baker et al, Trustees, vs. Nachtrieb, 19 *Howard*, 126, and was decided in 1856.

The court below was reversed (without a dissent from Grier, J.), on the point that the receipt Nachtrieb signed when he left the society

> "must be treated as the contract of dissolution between the plaintiff and the society of their mutual obligations and engagements to each other."

So treated, the bill in equity was not properly framed to attack it for fraud, and hence, it was conclusive that Nachtrieb had no claim against the society.

It will be noticed that the receipt was as follows:

> "To-day I have withdrawn myself from the Harmony Sociery and ceased to be a member thereof; I

have also received of George Rapp two hundred dollars as a donation agreeably to contract."

This Nachtrieb case as ruled in the Circuit and Supreme Court, is full to the proposition that by a voluntary withdrawal, the one so withdrawing lost all his claim or rights of, in, to, or out of the common property of the society.

The case of Lemmix vs. Harmony Society, No. 2, November term, 1852, of the Circuit Court of the United States for the Western District of Pennsylvania, in equity, was a bill filed June 10, 1852, alleging an unlawful expulsion, and praying for an account as in the Nachtrieb case. Issue was joined, testimony taken, and on February 3, 1855, Judge Irwin filed an opinion dismissing the bill on the ground that the plaintiff had failed to show an unlawful expulsion.

Though a bond was filed for an appeal to the Supreme Court of the United States, it does not seem it was prosecuted.

This case is direct authority to the effect that the society may expel a member, and when properly expelled, all his rights to the common property of the society cease and determine.

The next case was that of Speidel vs. Henrici, *et al.*, reported 120 *U. S. Reports*, 377.

The bill in equity was filed June 7, 1882, by Speidel, who alleged that he was at one time a member of the society, but left it in 1831 to be married.

The bill alleged fraud practiced by Rapp and his society against Speidel and other members; that the system of the society was contrary to the laws of the land, and against public policy; that the property of the society was held in

trust by Henrici and Lenz, and was of great value, and the prayer was,

> "that said trust be rescinded and held for naught as resting upon fraud and iniquity, and being contrary to public policy and the laws of the land,"

that an account of the trust estate be taken, and a distribution thereof made.

The defendants demurred on the following grounds

(1) Statute of Limitations.

(2) Stale claim, which equity could not aid.

(3) Case stated in the bill not entitled to relief in equity.

The Circuit Court, McKennan, J., sustained the demurrer on the second ground. An elaborate opinion, which is not printed, but to which we ask attention, was filed, and, amongst other things, Judge McKennan held:

> "The trust alleged here was instituted for the *equal and exclusive benefit of the members of the Harmony Society.* It was part of the religious, as well as secular, policy of the society. *Fellowship in the society was the only recognized title to participation in its benefits. When that fellowship ceased from whatever cause, all further interest in the trust and all the privileges of membership were necessarily lost and were denied.*"

In the Supreme Court Mr. Justice Gray delivered the opinion to which there was no dissent, sustaining the decree in the court below, and, among other things, that opinion says:

> "The trust on which Rapp, and the defendants as his successors, held the common fund of the Harmony Society, is described in one place in the bill as 'for the members of said families and the contributors of said fund and for their common benefit,' that is to say, as is clearly explained by what goes

before, in trust for their common benefit as a community, living together in the community, working for the community, subject to the regulations of the community, and supported by the community. This was the 'said trust,' which, as the bill afterwards alleges, Rapp, up to his death, and his successors, until the bringing of this suit, 'always recognized and acknowledged.' The constant avowal of the trustees that they held the trust fund upon such a trust is wholly inconsistent with and adverse to the claim of the plaintiff that they held the fund in trust for the benefit of the same persons as individuals, though withdrawn from the community, living by themselves, and taking no part in its work."

"The plaintiff, upon his own showing, withdrew from the community in 1831, and never returned to it, and, for more than fifty years, took no step to demand an account of the trustees, or to follow up the rights which he claimed in this bill.

"If he ever had any rights, he could not assert them after such a delay; not on the ground of an express and lawful trust, because the express trust stated in the bill, and constantly avowed by the trustees during this long period, was wholly inconsistent with any trust which would sustain his claim; not on the ground that the express trust stated in the bill was unlawful and void, and therefore the trustees held the trust fund for the benefit of all contributors in proportion to the amounts of their contributions, because that would be an implied or resulting trust, and barred by lapse of time. In any aspect of the case, therefore, if it was not strictly within the statute of limitations, yet the plaintiff showed so little vigilance and so great *laches* that the Circuit Court rightly held that he was not entitled to relief in equity."

In Goesele and others against Bimeler and others, 14 Howard, 590, the Supreme Court of the United States had under consideration the agreements on which the society at Zoar, Ohio, was founded, and, in many respects, such agreements resemble those we have hereinbefore considered. It was there held, by the unanimous opinion of the Court, that on the death of a member, his individual connection with the

society ceased, and that, as he had no individual ownership, nothing was transmitted to his heirs, and the plaintiffs in that case, who were the heirs at law of one of the deceased members, were held to have no title whatever to maintain the bill.

Judge McLean, in delivering the opinion *inter alia*, said:

> "All individual right of property became merged in the general rights of the association. *He had no individual right and could transmit none to his heirs.* It is strange that the complainants should ask a partition through their ancestors when by the terms of his contract, he could have no divisible interest. They who now enjoy the property, enjoy it under his express contract. * * Land and other property were to be acquired by the members, but they were not to be vested with the fee of the land. While they remained in the society, under its general regulations, the products of their labor on the land and otherwise were applied, so far as necessary, to their support. Beyond this, they were to have no interest in the land, or in the personal property. * * * *But from the nature of the association and the object to be attained, it is clear the individual members could have no rights to the property, except its use, under the restrictions imposed by the articles. The whole policy of* the association was founded on a principle which *excluded individual ownership.* Such an ownership would defeat the great object in view, by necessarily giving to the association a temporary character. If the interests of its members could be transferred or pass by descent, the maintenance of the community would be impossible. In the natural course of things the ownership of the property in the few years, by transfer and descent, would pass out of the community into the hands of strangers, and thereby defeat the object in view. * * If members separate themselves from the society their interest in the property ceases. * * *"

In the Court of Appeals, in the state of New York, in the case of Burt vs. Oneida Community, 137 *New York Reports*, 346, they considered the articles of association on which the

Oneida Community was organized, many of the provisions of which are substantially the same as those in reference to the Harmony Society.

In that case Burt, one of the members, was expelled, and he filed a bill asking to be reinstated, but the court held that the community had the right to expel a member, and that expulsion terminated his personal connection with the society, and all his rights to the use or enjoyment of the property of the society. After reviewing in general, on pages 353 and 354 of the opinion, the contents of the agreement, the court summed up by saying:

> "These were the main features of the organization to which the plaintiff voluntarily became a party. It is not shown or found that he was induced to enroll himself among its members by any fraud or duress, and, viewing it solely as a business undertaking, it was not prohibited by any statute or in contravention of any law regulating the possession, ownership or tenure of property. It imposed no unlawful restraint upon the alienation of property, for the title to its real estate could be conveyed at any time by the united action of the members if they so willed it. *It was a joint holding of property by the adult members of the community with this qualification, that upon the death or withdrawal of a member no share or interest therein passed to him or his personal representatives, but they who survived or remained continued to hold jointly the entire property in solidum.*"

Goesele vs. Bimeler, 14 *How., U. S. Rep.*, 589.

Same case, 5 *McLean*, 223.

Gasely vs. Separatists Soc., 13 *Ohio St. R.*, 144.

Waite vs. Merrill, 4 *Maine*, 102.

Schriber vs. Rapp, 5 *Watts*, 351.

Gass vs. Wilhite, 2 *Dana, Ky.*, 170.

In the report of this case in 5 *McLean*, 230, where McLean sat as Circuit Judge, he said, in delivering the opinion of the court:

> "Individuality of ownership of the property then possessed by the members of the association was abolished, and also future acquisitions, for the common right of an interest in the whole. This common right was limited to the members of the association; *consequently those who left it, or were expelled, forfeited such right.*"

The Supreme Court of Maine, in the case of Waite vs. Merrill et al., 4 *Maine*, 90, considered the agreements under which the Shaker Society of the town of New Gloucester was organized, the provisions of which agreements, in many respects, are similar to those of the Harmony Society.

The court held, in an unanimous opinion, that the agreements were legal and valid, and that the plaintiff who had brought action to recover compensation for his services to the society while he was a member thereof could not recover.

Attention is asked to the clear, well-reasoned opinion of the court, sustaining the agreement, insisting upon the view that we have hereinbefore urged, of the personal connections between the members and the society, and that that personal connection could not be transmitted to any one, nor would it descend to heirs at law. Death or withdrawal terminated and ended it.

The Supreme Court of Ohio, in the case of Gasely and others vs. the Separatist Society of Zoar, 13 *Ohio State Reports*, 145, considered the agreements under which that society existed, and are quite similar to those of the Harmony Society.

In that case one of the members withdrew, and afterwards filed a bill for an account against the society. It was held that she did not have any legal or equitable right to any portion of the property of the Zoar Society, and by her withdrawal she terminated her personal connection, and therefore all her personal right to the property. That she had a qualified interest in the property only as a member of the society, and to the extent of its use for their common support and maintenance, and when she separated from it she lost that right.

In Grosvenor vs. United Society of Believers, 118 *Mass.*, 78, the court considered the agreements of the society known as "the Society of Believers," commonly called the Shakers.

That case mainly turned on the right of expulsion, which the Court sustained. It especially confirmed the right of the ruling body to determine the occasion upon which a member should be expelled, and it also upheld the agreements by which, as in the Harmony Society, each member renounced all right to recover for services, and the court used the following language:

> "In each of these cases, the plaintiff, after arriving at full age, signed the instrument styled 'Covenant or Constitution,' by which the 'United Society of Believers' were bound together as one body in all their religious, social and pecuniary interests. Her rights must therefore be determined by the provisions of that instrument:
>
> "1. She cannot recover for her services, either upon the written agreement or upon an implied assumpsit; because all such right is expressly and explicitly renounced.
>
> "2. She cannot recover for the expenses of her support since her separation from the community; because, whatever support she was entitled to receive under the 'covenant,' she was to enjoy as a member

> of the church so constituted, with the others, 'according to their several needs and circumstances,' and only 'while standing in gospel union and maintaining the principles of this covenant.' It is not an absolute right of support, but a qualified and peculiar one; the extent and manner of which can be measured and determined only by the constituted authorities of the organization thus created."

In White vs. Brownell, vol. 3 *Abbott's Practice Reports*, 318, the Court of Common Pleas considered the agreements of the open board of brokers, in New York, and held that one who became a member thereof was bound by all the terms of said agreements, and that the court must recognize and enforce the provisions of the same.

It might not be out of place to observe:

(*a*) That in Schreiber vs. Rapp, *ante*, the Supreme Court of Pennsylvania affirmed the legality of the contracts of 1805 and 1827.

The Supreme Court of the United States, the Circuit Court of the United States for the Western District of Pennsylvania and for Ohio, the Court of Appeals of New York, the Supreme Court of Ohio, of Maine and of Massachusetts, affirmed the validity of similar contracts for the Oneida Society, the Shaker Society, and the Separatist Society at Zoar, as see cases *ante*.

(*b*) That the agreements do not conflict with the rules as to perpetuities, for the estate is vested, and at any time the property of the society can be sold by the trustees.

See especially on this the case of Goesle vs. Bimeler, 14 *Howard, U. S. Rep.*, 589.

Hillyard vs. Miller, 10 *Barr*, 326.

THE PROPERTY IS NOT HELD FOR A CHARITABLE USE.

Because,

(1) The property now sought to be divided is in a small sense the gift of any one, but, on the contrary, is the result and accumulation of years of labor and trade.

A charity necessarily implies a gift or bounty.

Bispham's Equity, sec. 123, (4th Edition).

(2) The agreements under which the property is accumulated adopt each contributor as a member, and by mutual and dependent covenants the adopted member agrees to work, and in consideration thereof he is to be fed, clothed, housed, etc., so long as he remains in the society.

There is, therefore, no distribution of property, but a *quid pro quo.*

What the member gets is a consideration to him for his labor, etc.

Kain vs. Gibboney, 101 *U. S.*, 362.
Corks vs. Manners, *L. R. 12 Eq.*, 574.
Jackson vs. Phillips, 14 *Allen*, 539.
Swift's Extrs. vs. Beneficial Society 73 *Pa.*, 362.
Marsden on Perpetuities, page 298.

(3) The only persons interested in the property, or to receive benefit therefrom, are those who are members of the society, and who sign the written agreement, and thus they take, not as charitable recipients, but as worthy members of the Harmony Society.

Bispham's Equity, sec. 124.
Perry on Trusts, sec. 697.
Babb vs. Reed, 5 *Rawle*, 151.
Swift's Exctrs. vs. Beneficial Society, 73 *Pa.*, 362.
Goesele vs. Bimeler, 14 *Howard*, 229, 230.
Schreiber vs. Rapp, 5 *Watts*, 351.
Nachtrieb vs. Harmony Society, 3 *Wallace, Jr.*, 66.
Speidel vs. Harmony Society, 120 *U. S.*, 377.

The conclusion is plain and undoubted.

No one of the appellants ever had or has now or would have if the Harmony Society was dissolved any right *whatever* to participate in the distribution of the society's property.

The members who at any one time comprise the society may distribute among themselves all the property of the society, of course providing for payment of debts.

No one else than these members at any time or in any contingency whatever may participate in the distribution of its property.

SECOND QUESTION.

Is the Harmony Society Dissolved?

The master and the court below answered this question in the negative. The society is not dissolved. It is just as truly a society to-day as it was in 1827, or 1836, or 1847. The agreements do not provide for any certain number of members to make a society, and seven is as good as seventy for that purpose.

There is a peculiar burden upon the appellants to induce this court to reverse such finding of facts as above referred to. The master went at great detail into all the evidence and found against the dissolution. So did the court below, when it affirmed the master's findings. Surely to reverse *both* a master *and* the court below would require a *palpably plain* case of error on their part.

But this court, if it examines the evidence, will be struck with the barrenness of it to prove a dissolution. It, indeed, proves just the contrary.

Restating the question, it is as follows:

(II). Has the Harmony Society been dissolved

(*a*) By mutual consent of its members, or

(*b*) By the abandonment of the purposes for which it was formed?

When the plaintiffs began to take testimony in the court below it was before an examiner who had not the power to

rule on questions of evidence. Counsel differed widely on what was admissible, and eventually both sides submitted to the Circuit Judge, Acheson, who wrote out an order defining the limits of the testimony, and among other things he restricted, in the first instance, this testimony to the question whether the society has abandoned the purposes for which it was formed.

Attention is called to the fact that there may be a distinction between the purposes of the society and the means adopted for the attainment of those purposes.

In Judge Acheson's opinion, quoted *supra*, the present inquiry is limited in this branch to this:

Has the society abandoned the purposes for which it was formed?

Now, as we hereafter show, under one view and in a limited sense, it might be argued that the sole purpose of the organization of the society was the approximation, so far as human imperfections will allow, to the fulfillment of the will of God. The means of reaching such an approximation, the agreement of 1827 prescribes, are the adoption and practice of certain principles, among which are communism of property and the observing of virtues and affections tending to temporal and eternal good.

Yet the practice of all these principles only tends towards the goal, which is the purpose, *i. e.*, the fulfillment of the will of God.

If the opinion of Judge Acheson be held to mean, technically and precisely, to limit the inquiry as to whether the society has abandoned its purpose to fulfill, as near as human imperfections will allow, the will of God, then, the inquiry

would seem to exclude the investigation of any particular means which seventy years ago were thought to be important. And this, because many people, at different times, and all claiming and believing in Christian fellowship, have thought that the most diverse, and indeed, hostile and irreconcilable means, were, from time to time, the most desirable in reaching the fulfillment of the will of God.

A noted illustration of this is the infamies of the inquisition, and the thousands of martyrs who have been burned at the stake.

If the inquiry were merely as stated it would involve the most elaborate, and also, indefinite and vague inquiries. It would raise such questions as—

How is the fulfillment of the will of God to be best accomplished?

What is the fulfillment of the will of God?

Does it require any form of worship of God, and if so, what?

Does it require any form of religious belief, and if so what?

This would open up a field of inquiry which is as broad as literature, and as prolific in disputes as the diverse religions of the world.

To answer such a question all the beliefs and sects of Christianity at least, possibly of humanity, would present themselves for judgment.

If such is the question, and the sole question for inquiry, *i. e.*

Has the Harmony Society abandoned its purpose to fulfill, as far as human imperfections will allow, the will of God?

Then, there is absolutely no evidence in the case which would support the affirmation of that issue. Even so versatile and willing a witness as Feucht does not rise to the occasion.

Assuming, however, that the word "purpose" in the opinion of Judge Acheson was used in the broad sense, to designate the general objects of the society, and the mode adopted for the accomplishment of such objects, we come to the consideration of the questions raised above, as to the alleged dissolution of the Harmony Society by reason of the abandonment of its purposes.

We therefore inquire:

(*a*) Has it been dissolved by mutual consent of its members?

The bill alleges this, paragraph 26; the answer denies it. The burden is on the plaintiff to prove it.

The master and the court below found against it.

There is not one particle of proof to sustain it. No witness testifies to it.

On the contrary, there is proof that it is in full life; that it now exists as it has for over (70) years; that it differs only in those things where time and new discoveries and inventions have worked changes in all our modes of life. The steam railroad, the telephone, natural gas, etc., have necessarily worked changes in all our lives—less in them at Economy than elsewhere. A society with ten or twelve men, or less, could not work the farms, or keep open the shops, etc., as if it had fifty or one hundred men.

See testimony of—

John S. Duss, (Record vol. III., pp. 487, 488.)
Frederika Mountz, type-written testimony 1378, (Record vol. III., pp. 382, 383, 390.)
Judge Hice, (Record vol. III., pp. 202, 203.)
J. Twin Brooks, (Record vol. II., pp. 650–651.)

(*b*) Has the society abandoned the purposes for which it was organized, and thereby become dissolved?

It will be noticed this requires an examination *in limine* of

(1) What were and are the purposes for which the society was organized?

(2) What would constitute such an abandonment as would work a dissolution of the society?

(1) What were and are the purposes for which the society was organized?

The answer to this is found in the agreements of 1805, 1827 and 1836. There and *only* there are the purposes for which the society was formed definitely and affirmatively stated.

The language of the agreement of 1827, which treats in detail of the purposes and the mode of their attainment, has the following preface:

> "*Whereas*, By the favor of Divine Providence, an association or community has been formed by George Rapp and many others, upon the basis of Christian Fellowship, the principles of which being faithfully derived from the sacred scriptures, include

> the government of the patriarchal age, united to the community of property adopted in the days of the apostles, and wherein the single object sought is to approximate, so far as human imperfection may allow, to the fulfillment of the will of God, by the exercise of those affections, and the practice of those virtues which are essential to the happiness of of man in time and throughout eternity."

The basis and foundation of the society is Christian fellowship, the principles of which are derived from the Holy Scriptures, and which include patriarchal government and community of property.

The exclusive or single object the society seeks is to approximate to the fulfillment of the will of God, and this is to be accomplished by the exercise of those affections and the practice of those virtues which are essential to the happiness o man in time and eternity.

What are those *affections and virtues?*

They are not specified.

No special form of religious belief is prescribed (nor was any declaration of faith ever required for admission to membership.)

The most that can be definitely said is they are those not inconsistent with Christian fellowship, as derived from the Holy Scriptures, and the practice of which tend to the fulfillment of the will of God.

Patriarchal government and community of property only are defined *as part of the principles of Christian fellowship.*

Taking the agreement of 1827 as a whole, it founded the society on community of goods, and gave it the patriarchal form of government, and the members were to practice the

affections and virtues growing out of Christian fellowship, and which tended to the good of the members in time and eternity.

The society was not a church or religious organization, but a community of kindly fellowship, having all property in common, and governed by a patriarch, whose will was the supreme law; and the affirmation of approximating to the fulfillment of the will of God by the practice of virtues and affections which tended to the eternal and temporary happiness of the members, was a broad, general assertion, not to or for any form of worship, but as a rule for daily life.

No specific rules were adopted, and each one, whatever might be his particular form of belief, was largely left to determine them for himself, subject to the patriarchal rule.

This is the result.

The foundation is Christian fellowship; that kindly brotherly love and affection, which had the divine sanction, and command of *Love one another*. It had no ceremonies, no altars, and no burnt offerings. It had no form of worship prescribed. But it was to be the rule of daily life.

Two of the principles derived from sacred scriptures are enumerated as the guiding and most important.

The Patriarchal Government, when George Rapp was the sole patriarch, which was changed by the agreement of 1847, when George Rapp died.

Community of property, as in the days of the apostles.

This is still unchanged. It necessarily subordinated the individual to the society, and, as the subsequent portions of the agreement of 1827 show, gave him no separate individual interest in the common mass which he could sell or transfer, and yet gave him, in one sense, a lien on the whole mass of property to insure his support and maintenance.

What are the other principles?

They are not enumerated.

The broad general rule is laid down to approximate to the will of God by the practice of virtues and affections which tend to man's happiness in time and eternity.

What these were is purposely not stated. It was left for the Patriarchal Government, succeeded by the Board of Elders, from time to time, to take such action as might be necessary or be deemed expedient to repress practices violating this broad rule, and to suggest others which might tend to its practieal triumph.

The Agreement of 1847, besides giving to the Board of Elders the entire internal management of the Harmony Society expressly gave it the power

> "to establish regulations for the maintenance and improvement of the morals of the society."

The only witnesses called by the plaintiffs who speak of the principles of the society, or the purposes for which it was formed, are Henry Feucht and Julius Stickel. Yet, each of them admitted, on cross-examination, that the constitution of the society was the source from which its principles were derived.

Henry Feucht—Record, vol. III, pp. 55, 57, 58.
Julius Stickel—Record, vol. III, pp. 82–87.

But the *purposes* for which the society was organized included the temporal bodily *support* and maintenance of each one of its members, as well as the temporal and eternal happiness of each. It would be a mistaken and abortive view which overlooked this. The consideration for the surrender of worldly goods to the common fund was the adoption into the membership of the society—becoming one of them—and being maintained and supported by the society. The common fund was the means by which this was mainly to be done.

One of the ingredients of the communism of property, as adopted in the days of the apostles, was that to each was given out of the common fund as he had need. The communism adopted by the Harmony Society, therefore, included the temporal support out of the common fund.

This support and maintenance was one, if not the *main, purpose* of the society.

Indeed, it underlaid all the others. Unless the body was kept, nourished and maintained, and the mind fed and en-

lightened by eating, neither temporal nor eternal happiness was possible. And yet, to do this, it was necessary to use the common property.

It would then be safe to conclude that the main and chief purpose of the Harmony Society was the bodily and temporal support, nourishment and education of each of its members.

The Harmony Society is not a religious organization or church.

The church, in its popular sense, was founded to propagate and preserve the religion of Christ, and whatever may be its sub-divisions, it prescribes the worship of Christ and God, and exists for that.

Religion is the recognition of God as an object of worship, and this may appear or exist in all the forms of worship which the varying beliefs of ages have created.

But to be a religious body, or a church, is necessarily to exist primarily for the worship of God by some set ceremonial and service.

This is the prime, and, indeed, the sole purpose, of the religious body, and the Mortmain statutes were passed to prevent vast quantities of property being tied up to further certain religious propaganda.

Now, the agreement of 1827 does not adopt any religion, or prescribe a form for the worship of God, or state that as its purpose. Its main purpose was to secure the maintenance and support of its members—not to determine upon some form of religious belief, and organize for its propagation and preservation.

All human government is an approximation to the fulfillment of the will of God. But no human government is considered as a religious body or a church.

The fact, then, that the fulfillment of the will of God is an object of this society, should not blind or mislead one to its main purposes, which were, as the details of its agreement shows, the organization for, and the acquisition of, property to be used for the maintenance, support and education of its members.

Such a society could acquire and possess property without a limit, while the Mortmain statutes step in and limit acquisition in the case of church and religious societies.

Inside of the society, and one of its instruments, was a church, but the church was not the society, nor yet the society the church.

Thus, in Article III of the agreement of 1805 it speaks of the

"church and school."

Again in Article IV of the agreement of 1827.

Again, the agreement of 1847 speaks of appointing spiritual leader and having authority as to

"church discipline."

They all recognize the church a body, existing just as the school, but neither church nor school was the society or aught else, except one of the means of accomplishing one of the purposes of the society.

(2) WHAT WOULD BE SUCH AN ABANDONMENT AS WOULD WORK A DISSOLUTION?

It is obvious that the Harmony Society agreements were between all of the members constituting the society. Each member was a contracting unit. In consideration of the unit surrendering to the society all his property and all his labor, the society agreed to support him and his in health and sickness and for his and their lives.

Each member can insist upon the fulfillment of this contract, and the entire mass of the property is marked with that burden, and without the consent of each that property cannot be taken by one or all of the others and divided among them. What all the members but one cannot directly do, they cannot indirectly do. If directly, by vote and act, they cannot take and scatter the common fund, they cannot accomplish indirectly by evil conduct.

The abandonment of purposes or principles which would take from each subscriber this lien he has on the common mass of the property, and would dissolve the society and scatter its assets, so that no one of the signing members could any longer have a society, it could compel to keep its covenants, or a common mass of property he could rely upon for his support must necessarily, therefore, involve all the members; not merely a part, but all.

If a third or a half abandoned, and the other half or two-thirds did not, but kept the faith, surely the latter would not be punished for the sins of others.

Surely because, say, the one-third or one-half were false to their written contract and promise to practice the virtues and affections of Christian fellowship, which tend to man's temporal and eternal happiness, this would not convict the other two-thirds or one-half who had not been false, but had faithfully kept their contracts.

Remember the contract is between each individual on the one side, and the Harmony Society on the other.

Because some of the individuals kept not their part of the contracts is no reason why all the rest of the individuals and the Harmony Society should be prevented from keeping theirs.

The abandoment, then, would have to include all the members.

The things abandoned would be the purposes of the society.

That is, all the purposes.

Not part of them, but all of them—that is, all of the main things for which the society was organized.

It will be noticed that no one of the members asserts a dissolution, or asks for one, or alleges that the purposes of the society have been abandoned.

The allegation is made by alleged heirs of deceased members, and they ask the court to decree and adjudge that:

(*a*) There has been such an abandonment of purposes

as

(*b*) Should on their petition make a dissolution.

The abandonment must be utter and entire.

Not a temporary lapse, even if repeated, but a continuous and determined line of conduct, showing the settled purpose of wholly turning away from the original purposes of the society, and devoting the common fund to alien, incongruous and hostile purposes.

There was no abandonment before 1890.

The bill alleges this in the most direct and positive manner.

Paragraph 8th of plaintiff's bill asserts:

> "*That the Harmony Society from the period of its inception until a recent date, adhered rigidly to its plan of government and became illustrious* and highly respected by reason of its sincere advocacy of the equality of man, its espousal of the highest principles of Christianity, and its honesty and benevolent administration of all public functions, whether in the management of its internal affairs or in its many transactions with the citizens of Western Pennsylvania."

Again, in paragraph 10th:

> "That during the year 1890, after a long period of *prosperity* and *complete harmony* in said society began a second conspiracy." * * *

Notwithstanding the claims made, or the agreement as to the effects of the contract of 1847, these averments of the bill are directly to the contrary.

The present bill was filed on June 27th, 1894.

The abandonment then was after 1890, and between 1890 and June 27th, 1894, because when the bill was filed the allegations in it were (paragraphs 25, 26) that the Harmony Society *then was* dissolved.

The abandonment of purposes which worked this destructive effect in a society founded in 1805, and surviving the De Leon conspiracy of 1831, when 175 persons left and were paid $105,000.00, and the different litigations the society has had, was, the bill alleges, effected between 1890 and 1894, *and this with the admitted facts staring them in the face, that in 1890 and 1892 the society, as a society, formally reaffirmed its ancient constitution and agreements.*

See those agreements.

Has the plaintiff shown such an abandonment of the purposes for which the society was organized?

The purposes of the society were, in a general way, given by Feucht and Stickel, though each admitted the written agreements were the supreme evidence of them, as is evident they are.

Feucht gave the purposes (Record, vol. II, pp. 435, 436) as

> "a community of goods, universal brotherhood, and a celibate society in every respect."

Then (Record, vol. III, page 449,) he says the things the society abandoned are:

(1) Christianity;

(2) Brotherhood;

(3) Humanity.

There was no principles of harmony or brotherhood, or anything of that kind, and he seems to assert intemperance and immorality as the condition of the members.

He says the agreement of 1827 is the only declaration of faith and principles he knows of (Record, vol. III, pages 57 and 58).

Stickel (type-written testimony, page 382,) says the main characteristic was a brotherhood where all were treated alike.

Again (Record, vol. III, p. 84,) a celibate life; no drunkards; Christian people going to church; couldn't go out of the village; home at nine.

The testimony as to the abandonment of these things will be hereafter considered, but attention is just now called to the following:

The plaintiffs have not shown an abandonment by showing any written contract or avowal of the present members so to do. On the contrary, the last general articles of agreement in 1890 and 1892, signed by all of the then members, distinctly affirms and re-establishes the agreement of 1847, which reaffirmed those of 1827 and 1836.

Thus the agreement of April 30th, 1890, signed by Henry Feucht and Julius Stickel, and every then member of the society, expressly affirmed:

> "We do hereby solemnly recognize, approve, reaffirm, and continue the articles of agreement and

compact of our association entered into at Economy on the 12th day of August, 1847, and recorded in the recorder's office of Beaver county as set forth in the preamble hereto, *and declare the same to be in full force as a whole and all parts thereof, including the agreements and compacts mentioned and designated in the first article thereof as fully and to the same extent as said mentioned agreements were recognized and established by said first article.*"

Referring to this agreement of 1847, we find in its first article it expressly affirms and continues the agreements of 1827 and 1836.

So in the spring of 1890, in a formal and solemn manner, every member of the society joining, we have a reaffirmation and republication of the agreement of 1827.

And so in 1892.

By another agreement, dated December 20th, 1892, all the member (except the Feuchts) said that they do—

"*herebe ratify and confirm* the articles of agreement and compacts of our association entered into at Economy on the 12th day of August, 1847, and those of April 30th, 1890, * * *"

This was the re-publication in December, 1892, of the agreement of 1827.

The appellants do not pretend to show any action *of the society* or of its Board of Elders formally turning away from the old things and kneeling unto alien Gods.

No particular number of members to constitute society.

The society, as a society, exists now as it did in 1847.

Aside from the change in the industries of the society, and the state of its finances, the entire scope of appellants' evidence on this head is that certain individuals were guilty of immoralities, and that the Board of Elders, on complaint made, neglected to control the evil.

Not that the society, as a whole, was immoral, and given to lust and drunkenness, but that A, B and C of its members were, and, on complaint made, this was not remedied.

Even if this were true, it falls lamentably short of the fullness of proof required.

But let us see what the proof on it is.

The only witnesses alleging abandonment are Feucht and Stickel.

Feucht certainly is discredited and wholly overthrown as a truthful man, but assuming that he and Stickel speak the truth, let us see what their testimony is.

Henry Feucht:

He was born in the society (hence, his parents did not practice celibacy.) He left in 1865, and married, receiving from the trustees $1,050.00. He returned in 1888, was admitted again in 1890, and signed anew, (Ex. 18), the constitution, (220-223). He is by nature an envious, jealous man—fault-finding and mischevious. He began at once to stir up strife in the society, and was removed by Henrici and Lenz, to the brickyard, where he was kept until 1892. He caused trouble there, and was sent to keep the orchards and bees. His misconduct, refusal to obey the elders, restless, mis-

chievious, back-biting and slander, caused the Board of Elders, by a vote of eight to one, to expel him on April 25th, 1892. Because the sore financial distress the society was then in, this was rescinded August 1st, 1892. He kept up his evil conduct, refused obedience to the Board of Elders, and soon after Henrici's death, and on February 10th, 1893, he filed a bill in equity in Beaver county against the society, which asked for a receiver, and precipitated a run on the Economy Bank, which nearly wrecked it and the society, too. To get rid of him and his wife, his brother and his wife, and his sister, the society gave them in money $28,500, and in land about $15,000 or $20,000, and he signed a release dated June 21st, 1893.

Since then his occupation seems to be to circulate slanders and aid litigation against the society.

The sole cause of all his evil doings is his jealousy of Mr. Duss, and his (Feucht's) failure to be elected either as an elder or trustee of the society.

He is contradicted by every witness in this case with whom he comes in contact.

J. Twin Brooks. Record, vol. II, 647, 650.
Judge Hice. Record, vol. II, pp. 727, 728.
John S. Duss. Record, vol. II, pp. 864, etc.
Mrs. Emertz, 1226, 1245, of type-written testimony.
Susan Erisman, 2409, of type-written testimony.
Frederica Muntz, 1383, 1384, of type-written testimony.
W. H. Breitenstein, 2077, 2083 of type-written testimony.
T. H. Given, 2806, 2809, of type-written testimony.

Numerous witnesses swear that his reputation for truth is bad.

Feucht himself says he swears to what is told him as personal knowledge. (Pages 250, 251.) Record, vol. II, pp. 471, 472.

His testimony is in flat contradiction of his written statement as to Duss, Ex. 20, (page 333). Record, vol. II, pp. 501, 502.

His evidence as to the abandonment will be found in detail from pages 306 to 377 of type-written testimony, and Record, vol. III, pp. 57–66.

(1) *Celibacy:*

He testifies that he and his sister were born in the society (305), and that there was no provision in favor of celibacy in the constitution, and that he has no personal knowledge of the members ever adopting the same. (Record, vol. II, p. 486, 387. Record, vol. III, p. 57, 58.)

(2) *Universal brotherhood:* Record, vol. II, pp. 487, 488.

He testifies that by this he means that all were expected to treat each other alike; live up to Christian principles; to be good, honest, upright Christian citizens, and respect fellowship and morality; to live like temperate men; like honest citizens and Christians, and not as adulterers and drunkards, (307–309).

(3) *Christianity:* Record, vol. II, pp. 488, 489.

Feucht's reason for saying that Christianity was abandoned was because Duss said to Henrici in the pulpit,

"I have looked upon this hypocrisy long enough," (310, 311). This was the only instance of what he called the abandonment of Christianity, though he asserts that, contrary to the principles of the society, members were maltreated by council members, and that the foundation principles of the society were not respected, but he gives no instance, though pressed to do so.

There is no evidence that old beliefs, or old forms of worship were abandoned.

(4) *Abandonment of Brotherhood:* Record, vol. II, p. 490.

The witness gives at length his idea of the brotherhood, and then gives, as an instance of its abandonment, that he was expelled without notice, and the opportunity to be heard. He gives no other instance of the abandonment of brotherhood.

(5) *Abandonment of Humanity:*

He gives no instance whatever of this. Record, vol. II, pp. 490, 491.

The witness states (Record, vol. II, p. 491,) that the persons whom he accuses as members of the society of abandoning christianity, brotherhood and humanity, were Messrs. Duss, Laubbe, Nicolaus, Platz, Reithemuller and Mrs. Siber, and that was all. Record, vol. II, p. 491.

Taking up his averment that there were no principles of harmony, or of brotherhood or any thing of that kind obeyed, and that intemperance, immorality, and all other things connected with immorality prevailed, his testimony is as follows:

This began after Duss was elected Junior Trustee, (Record, vol. II, p. 490).

The instances of immorality, including adultery and drunkenness, he gives as follows:

(6) *Drunkenness:*

Laubbe, who is dead. Record, vol. II, p. 492.

Nicolaus, no longer a member of the society. Record, vol. II, pp. 492, 493.

Reithmueller, one of the then trustees.

Platz, no longer a member of the society.

Stievater, no longer a member of the society. Record, vol. II, p. 493.

Witness admits he never complained to the Board of Elders, but he alleges that he did to Henrici, in the presence of Duss. (See his statement, Record, vol. II, p. 493.) Duss contradicts this, (Record, vol. III, p. 543).

He says this is the only complaint he made. Record, vol. II, pp. 493, 494.

Nicolaus is the only one he spoke to about his habits. Record, vol. II, p. 494.

He told Father Henrici of selling liquor to minors (Record, vol. II, pp. 494, 495).

The society made and sold whiskey from his earliest knowledge (Record, vol. II, p. 495, and type-written testimony, 321); and also wine and beer—thirty-five or forty years back.

These are all his instances of drunkenness in the society. Record, vol. II, p. 494.

(7) *Adultery:*

Letter from a Catholic priest and a doctor (name of neither given) to , asserting the confession of a dying woman to her husband, and impeaching Laubbe, one of the members. This letter witness gave to Stickel. Record, vol. II, pp. 495, 496.

Fredericka Kroll, and declarations of John Shied to Mrs. Kroll, (Record, vol. II, p. 497). Declarations of Fischern and Fredericks. (666, 668, 669 of type-written testimony.)

Jacob Nicolaus. Record, vol. II, pp. 497, 498.

These are all the charges of adultery that the witness cites. Record, vol. II, pp. 498, 499.

An examination of the evidence will show that he, in no instance, speaks from personal knowledge, and it was the rankest kind of hearsay testimony that he introduced.

On page 499 of Record, vol. II, he introduces the case of Mrs. Samuel Siber, who left the society on account of the rumors connected with her.

Feucht's testimony as to Mrs. Siber is on pages 499 and 500 of Record, vol. II.

On page 500 of Record, vol. II, he again asserts he has no other instance of adultery or charge to make.

(8) *Moritz Fredericks' treatment:*

Record, vol. II, 518, 519, abandonment of humanity.

(9) *Elizabeth Beck:* (743 of type-written testimony.)

Her treatment—

This in brief is all of Feucht's testimony—

Then comes the other witness—

Julius Stickel:

Stickel was much pleased with the society for a long time after he joined it, and down to Lenz's death in 189–, the society was all right, the members moral and correct, and the purposes of the society carried out, (392-398 of type-written testimony.

By and by, after Duss was elected junior trustee, (Record, vol. II, p. 523),

"it changed a little." Record, vol. II, pp. 525, 526.

> "Well, in very short words, I don't know what to say; in all their moral life everybody was becoming more careless;that is what I can say."

Drunkenness began to abound (Record, vol. II, p. 526), but it is only among men.

There was not much drunkenness at first, before he joined, (Record, vol. III, p. 527, as when Duss became trustee.

His knowledge of Mrs. Siber and his information to Duss. Record, vol. II, pp. 529, 530.

Other information to Duss (Record, vol. II, p. 532, 533). This is the letter which Feucht gave to Stickel about Laubbe (411 of type-written testimony).

He complained to Duss of drunkenness among the elders (Record, vol. II, pp. 536, 537.).

On cross-examination, he identifies the instances of drunkenness as follows:

Everybody in the society drank, receiving regular portions of wine, etc., (Record, vol. III, p. 93).

He identifies the following cases of extreme drunkenness:

Laubbe—Record, vol. II, pp. 542, 543.
Stievater—Record, vol. II, p. 543.
Platz—Recrd, vol. II, p. 544.
Hugo Miller—Record, vol. II, pp. 544, 545.
Reithmueller—Record, vol. II, p. 545.
Fischern—Record, vol. II, p. 545.

These were the only members who drank to excess (Record, vol. II, p. 545).

He gives the names of Lena Wolfanger and Philopena Wolfanger as the only two women who drank too much (Record, vol. II, p. 546).

At this time the society had 15 to 16 male members, and 28 to 30 females (Record, vol. II, p. 545).

He says Duss did not drink (Record, vol. II, p. 547), but he complained to Duss of the others drinking (Record, vol. II, pp. 547, 548).

This very briefly, but sufficiently, sketches the plaintiff's evidence on the question: Had the society abandoned the purposes for which it was formed?

No one of the members of the society, charged with any offense of any kind by Feucht and Stickel, are now members of the society except Mr. Duss, who has been overwhelmingly vindicated of the gross slanders against him and Reithmeuller, whose only offense has been occasionally drinking too much, as alleged by Feucht and Stickel, and contradicted by Judge Hice —(Record, vol. III, pp. 199, 204); *Mr. Duss*—(Record, vol. II, pp. 866, 867); *Mr. Brooks*—(Record, vol. II, pp. 647, 653, 683, 684). *It is not pretended or claimed that any other person, now a member of the society, has been guilty of any wrong whatever, or has abandoned in any way the purposes of the society.*

Drunkenness:

From the earliest organization of this society, down until the present day, its members have been mostly Germans, and to them has been allowed weekly, or every other week, during all that time a quantity of wine or beer or whiskey, two gallons during the summer, every two weeks, to each man, and one gallon to each man, every two weeks, in the winter. The society originally had a distillery for the manufacture of whiskey, and a place where beer was brewed. Its whiskey was a celebrated brand on the market, and largely sold. It made wine every year, and now has something like 30,000 gallons on hand. It raised grapes and manufactured them into wine.

It never was a total abstinence society, and as was quite natural, ever since its organization, one or more of its members have, from time to time, become too much addicted to drink.

To say that this increased to an alarming extent merely because Mr. Duss was elected trustee, in 1890, is to state a rank absurdity, and the proof in the case shows this. Mr. Duss himself is a temperance man, and a total abstainer. How his election to the office of trustee could increase the drinking habits of Platz and Stevater, et al., it is difficult to see.

While Feucht and Stickle have greatly exaggerated as to the drunkenness, every one of the persons whom they accuse of drunkenness has left the society, except Reithemuller, and as to him the evidence is by no means satisfactory that he indulges in more wine or beer than he can safely take care of.

The sale of liquor by the society has been, ever since its organization, down until the time of the Brooks law, without a license, but after the Brooks law they were advised it was necessary to procure a license, and such a license was procured for wholesale selling.

So far as drunkenness is concerned, of the twelve (12) then members of the society, only one, Gottlieb Reithemuller, is accused of it, and he denies it, and other witnesses sustain him.

Adultery:

All those accused of that have left the society. Mrs. Siber went out, and so did Stievater and Laubbe. The testimony against either of these was wholly insufficient, rank hearsay and deliberate exaggeration of the declarations of third parties.

The case of the charge against Mr. Duss as to Fredericka Kroll, including the perjured testimony of Weggle, and also

the testimony of John McNamee, as to what he saw in looking through the window, will be treated of further on, but all the charges against Mr. Duss have been overthrown by overwhelming testimony.

See as to the testimony of Stickel and Feucht as to the priest's letter about Laubbe, Mr. Duss' testimony—(Record, vol. II, pp. 862, 863).

See as to their testimony as to Mrs. Siber, Mr. Duss' testimony—(Record vol. II., pp. 861 to 863.)

No present member of the society is charged with adultery. There is no evidence whatever of direct proof as to anybody being guilty of it. These suspected persons, Mrs. Siber and Stievater and Laubbe—are no one of them members of the society. The total number of members of the society charged with it were three or four out of a membership of about forty-five.

So far, then, as the plaintiff's case depends upon the proof that the members of the Harmony Society had, as a body, or as a class, abandoned those moral precepts and principles which are recognized as part of all Christian fellowship which tends to temporal and eternal happiness, it has utterly failed.

The society was not a body where the members were given to adultery.

The society was not a body where the members were given to intemperance.

There was no abandonment of humanity, or Christianity, or brotherhood, and the case of the plaintiff—lamentably weak in any aspect of it—here, again, utterly and totally fails.

Abandonment of Industries:

Prior to the agreement of 1847 nothing whatever is mentioned in any of the articles of association as to what the industries of the society are, or should be.

The agreement of 1847 provides that the board of elders shall have the power—

> "to regulate and manage exclusively the internal temporal concerns of the Harmony Society; to appoint and remove superintendents in the several departments of industry; to make regulations and give orders in relation to their business operations, and generally to take care that the members perform the duties assigned to them."

The board of trustees is given power to manage the external business and affairs of the society, and the words are:

> "We do further ordain and establish a board of trustees for the exclusive management of the external business and affairs of the society."

This agreement of 1847 evidently then left to the board of elders and the board of trustees, within their respective limits, the determination of what industries the society was to engage in.

Ever since Rapp first came to America, in 1805, down until the present time, the industries and businesses of the society have followed its various wants and conditions, and the changing times, but no one industry has ever been declared, by any agreement, to be a part of the purpose for which the society was organized.

From time to time the society has engaged in nearly every branch of industry. For very many years it ran a distillery, making and selling whiskey, which it does not now. For

many years it made and sold beer, which it does not now. For years it made and sold silk, which it does not now. For years it made and sold woolen goods and blankets, which it does not now. It was engaged in the manufacture and sale of clothes, which it is not now. It was engaged in the banking business—the Economy savings bank—which it is not now. It was engaged in the steel business—Union Drawn Steel Company—which it is not now. It was engaged in the railroad business—the Pittsburgh & Lake Erie and the Pittsburg, Charleston & Youghiogheny Railroad Companies—which it is not now. It was engaged largely in the laying off and selling of lots, which it still continues, through the Union Company. It was also engaged in the manufacture and sale of cutlery, which it is not now. It was also engaged in the manufacture and sale of files, which it is not now. It was also engaged in the lumber business, which it is not now, except in a small way. It was always, more or less, engaged in agriculture, and so it is to-day. As the number of men in the society declined, hired men were employed to carry on the work, and this—as the testimony has already disclosed, and as will be more fully stated hereafter—together with other financial indiscretions of Henrici and Lenz, trustees, very nearly wrecked the society financially.

Then, too, when the society was composed of a large number of members, anywhere, say, from 150 to 200, or more, the internal industries of the society were carried on more elaborately than now. For example, there was a tailor shop, a boot and shoe shop, a wagonmaker's shop, a blacksmith shop, and such other shops as to furnish to the members their daily wants. As the membership of the society decreased and grew less, until the men of the society merely numbered four or five, and the women but eight or ten, it was impos-

sible and foolish to carry on such shops, no longer necessary for the welfare of the members.

The conclusion as to industries is as follows:

(1) No particular form of industry is prescribed in the articles of agreement, but the same is left to the Board of Elders and Trustees under the agreement of 1847.

(2) The Board of Elders and Trustees to-day, as in the past, have determined what the industries are which the society should follow.

(3) The industries of the society were always shifting, and depended upon the varying changes and surrounding circumstances.

Customs and usages of the society:

It is not pretended, except in the ridiculous charges made by Stickel and Feucht—(Stickel as to bad sausage served him once, (Record Vol. II, p. 535; Record Vol. III, p. 533), and Feucht as to his fight in reference to the purchase of two pairs of shoes, (Record Vol. II, pp. 479, 480; Record Vol. III, p. 534)—that each member of the society is not kept in accordance with the covenants in the different articles of agreement. Each is served alike, and each gets what the highest in rank gets. The mode in which this is done—by the store now carried on in a room in the Great House, by the baker in his distribution of bread, by the butcher in his distribution of beef, mutton and ham, by the dairyman in his distribution of milk, by the miller in his distribution of flour, etc., etc.—is given at length in the testimony of Mr. Duss.

An immense amount of testimony has been given as to change in the dress of the members of the society. This is a trivial and unimportant matter, and would hardly seem to justify the time that has been devoted to it. The truth seems to be that, when the society was making silk and woolen goods and cloths, it did manufacture a peculiar color of blue, and this material was used by different members of the society for their clothing. This, with the antiquated cut, and the somewhat peculiar hat and bonnet, did distinguish the members of this society. When these "blue" goods were exhausted, they necessarily had to resort to the purchase of material, and then commenced the deviation in color. The testimony on this will be found outlined by Judge Hice (Record Vol. III, pp. 199, 200, 208), and others.

There is, therefore, nothing in this abandonment of customs and usages, because:

(1) The society was not organized to carry out any particular custom or usage as to dress, or mode of distribution of supplies, etc., or as to what industries were to be followed.

(2) All these customs and usages and industries were under the control of the Board of Elders or Board of Trustees.

(3) There has been no change whatever in either the industries, customs or usages, except that which followed from the much smaller numbers of members, and the changed conditions and circumstances of life in which the society now finds itself. To carry on the old industries, for example, the file and cutlery business, involved them in a loss of, say

$500,000. To repeat that folly, and attempt now to carry on any of those old industries, for example, agriculture as it was carried on thirty years ago, would be to wreck financially the society.

Community of goods:

The sale to the Union Company of the home tract of land at Economy, and the Allegheny City land, it is asserted in the 20th paragraph of the bill, is an attempt on Duss' part

> "to wholly terminate the existence of said society, not only as to the government thereof by the Board of Elders and by the members, but also as to the ownership of any property."

Plaintiffs allege it was not competent for the trustees to make this conveyance, and it is a breach of trust and invalid.

The facts are, that after the debts of the Economy Savings Bank were paid, by the society borrowing large loans on long time, new troubles arose. Such suits as the present were threatened, which might involve the title of the society to its real estate, and prevent its sale to raise money.

Then, escheat proceedings were threatened, which would still further complicate the title. In addition, it was desirable to have the surplus value of the real estate, over and above the mortgage, available for emergencies. To put the real estate where it could the more readily be sold, and to have its surplus value thus available, it was advised by Mr. Brooks, page , and Judge Hice, page , that a corporation be formed capable of taking the real estate, and to it should be conveyed the real estate, and the stock, (all of the stock) of the corporation should be owned and held by the trustees for the Harmony Society. None of the personal

property was conveyed, but all of the real estate at Economy and Leetsdale was. This did not include Beaver Falls lots. All of the stock, directly or through the trustees, is owned by the Harmony Society.

The trustees hold in their names, as trustees, 7,950 shares. Dickson's testimony, Record Vol. II, p. 775.

The other stock is held by Dickson, ten shares, Hice ten, Duss ten, to make them eligible as directors, but written statements that it is the property of the society is signed by each.

Really, and in truth, the Union Company holds the naked, legal title, for the use and benefit of the Harmony Society, because that society owns all the stock in, and really is, the Harmony Society.

Technically, the trustees have converted realty into personalty, and the personalty is now held by them in place and stead of the realty. The property is not distributed among the members of the society, but is held upon the same trusts, and by the same trustees, as was the real estate.

Have the trustees, in so doing, abandoned the purposes for which the society was founded, or violated the trusts confided in them?

No one of the articles of agreement pretend to determine how the money of the society will be invested—whether in realty or personal property.

The agreement of 1847 provides as follows :

> "*Article 5th.* The said trustees shall jointly and severally have and exercise the powers following, to wit :

"1st. In their own names, or that of either of them, or otherwise, to purchase and sell, deal, barter, exchange and traffic, make all contracts and bargains, in the possession of the business, to invest the funds in stocks and other securities, and make transfers and assignments, to collect debts, receive and pay out moneys, settle claims, compromise disputes, institute legal proceedings, appoint and dismiss agents, clerks, and attorneys in fact and at law, and generally to transact all the external business affairs of the society.

"2nd. To make donations to seceding and excluded members, and the representatives of those who are deceased, and for such benevolent and charitable purposes as they deem prudent and fit.

"3rd. The said trustees shall have power jointly to purchase real estate in their own names, and also in their joint names to grant, bargain, sell and convey all or any of the lands and tenements now or hereafter owned by, or belonging to, the said society, and for this purpose to execute deeds of conveyance in fee simple or otherwise in their joint names, but the proceeds of all such sales shall be held in trust for the society."

This, undoubtedly, gave the trustees the most unbounded powers to carry on all sorts and kinds of business, and to convert real estate into personal property, or personal property into real estate. The conversion was in their discretion. They might do so when it was deemed advisable.

To do so violated no trust. It was the legitimate exercise of undoubted powers.

When it is recollected that every single member of the society gave his or her written consent to such conversion, (see Ex. 80) the objection now raised by outsiders seems ridiculous.

The sale to the Union Company was of a part, not of the whole, of the property of the Harmony Society.

See Exhibit No. 90.

In Butler County the entire property was sold. So in Posy County, Indiana. Why not here?

EQUALITY AMONG MEMBERS.

Want of this is alleged in the 23d paragraph of the bill and denied in the answer.

The only testimony offered in support of it is Henry Feucht and Julius Stickel. Both left the society in 1893.

Feucht's justification of the charge is found (Record Vol. II, p. 479–483,) and it involves his purchase of shoes, quantity of food he got, and refused tickets on the railroad.

Mr. Duss explains (Record Vol. II, p. 479; Record Vol. III, p. 533), about the shoes, and a host of witnesses cited *supra* as to distribution of supplies.

Julius Stickel (Record Vol. III, p. 68).

He specifies bad bologna pudding (Record Vol. II, p. 535).

This is explained by Mr. Duss, Record Vol. III, p. 533.

Not a single member of the society complains of any discrimination against him or her, now or at any other time.

Feucht and Stickel, not now members, the only dissatisfied ones.

JOHN S. DUSS.

All the other scandalous and false charges in the bill may be appropriately considered under this heading:

The bill alleges,

> "That the Harmony Society, from the period of its inception until a recent date, adhered rigidly to its plan of government, and became illustrious and highly respected by reason of its sincere advocacy of the equality of man, its espousal of the highest principles of Christianity, and its honesty and benevolent administration of all public functions, whether in the management of its internal affairs or in its many transactions with the citizens of Western Pennsylvania."

Then follows (paragraph 9) a reference to the Count de Leon conspiracy in 1832, and then in paragraph 10, plaintiff alleges:

> "*That during the year 1890, after a long period of prosperity and complete harmony in said society*, began a second conspiracy, as last aforesaid, the results of which have overturned and destroyed the entire government of the society, wasted nearly its entire wealth, depleted its membership to a few aged and infirm women, and placed the management of the society and the control of its remaining assets in the hands of one man and certain associates and confederates within and without the ranks of the society, as hereinafter more fully set forth."

Then follows (in 10th, 11th and 12th paragraphs of the bill) the alleged details of a plot by Duss and others to turn the Harmony Society over to Dr. Cyrus Teed and the Koroshan Society, presided over by Teed; but, as the bill alleges (paragraph 12), this plot was defeated, and

> "The plot to admit said Teed and his female followers was, for the time being, abandoned, and an entirely new and equally destructive plot was then arranged by said Duss, with the assistance of other confederates not allied with said Teed, and the same has now been almost consummated, as hereinafter more fully set forth."

Thus ended, as the bill itself admits, a plot to admit Teed and his society into the control of the Harmony Society.

THE SECOND PLOT,

Was (paragraph 14), according to the bill, as follows:

> "Upon the failure of the plot to turn the society over to the said Teed, the said Duss concluded to *wreck and dismember* the said Harmony Society, and thereby attain for himself and confederates what he had lost by not colonizing said society as aforesaid."

The purpose of the wrecking and dismembering was that Duss and his confederates

> "might acquire the entire assets of said society."

The bill does not allege that this second conspiracy has been consummated, but, on the contrary (paragraph 12), alleges that

> "The same has been almost consummated."

The things which Duss did, in pursuance of this combination to wreck and dismember the society, according to the bill, are as follows :

(*a*) Duss agrees (paragraph 15) with Hice and Reeves to use the money of the Harmony Society to pay off the alleged indebtedness of the Economy Savings Bank, and this bank was then wholly insolvent, and the money was used

> "without the knowledge or consent of the members of said society."

That his use of these funds was

> "fraudulent and unauthorized."

(*b*) That Duss and his confederates, (paragraph 16)

> "conspiring together to defraud your orators and the members of said society generally, and to provide means for the payment of the indebtedness of the said Economy savings bank,"

caused to be executed the four hundred thousand dollar mortgage on December 21, 1892; and this mortgage was made

> "without any authority from the said society."

And that the said mortgage was not the act of the society. That Duss, Hice and Reeves, and certain other confederates,

> "*by means of a foreclosure of said mortgage*,"

intended to obtain possession of all the property of the Harmony Society.

(*c*) That Duss, in June, 1893, (paragraph 16),

> "for the purpose of raising another large fund wherewith to secretly secure and induce removal of those members most likely to inquire into the validity or propriety of his conduct as trustee,"

caused to be executed the second one hundred thousand dol-

lar mortgage, which was made without authority from the society.

(*d*) That when Duss was appointed trustee (paragraph 18) the society was possessor of

> "valuable dividend-paying stocks in prosperous bridge companies, railroad companies, water companies and other prosperous corporations in the State of Pennsylvania, to the amount of nearly two millions of dollars, and that said Duss illegally sold, assigned and disposed of all, or substantially all, of said stocks."

That Duss, by these sales, in attempting to raise funds

> "to carry out his purpose hereinbefore set forth, and to divert the assets of the said Harmony Society from the use of your orators and the members and to appropriate the same for the advancement and enrichment of him, the said Duss, and his confederates."

(*e*) That Duss (paragraph 19), by

> "artifice, misrepresentation, coercion and fraud, induced or forced nearly all of the active and more intelligent members of the society to leave and withdraw from the said society,"

leaving Duss in control, with a few aged and infirm members who are ignorant of his plans.

That the money of the society was used by Duss fraudulently and secretly in getting rid of these members, and that the members Duss thus forced or induced to withdraw are as follows:

Samuel Sieber (Junior Trustee),
Hugo Miller,
Jacob Nicklaus,
Blaszius Platz,
Morits J. Fredericks.

Four of these were members of the Board of Elders, and in their places Duss elected Susie C. Duss, his wife, Maria Diem, eighty years old, Fredericka Muntz, seventy years old, Regina Lautenschlager and Carolina Molt.

That in addition to the withdrawal of members of the Board of Elders, Duss also

> "fraudulently and secretly induced, by misrepresentation, coercion, and the payment of large sums of money, the following members to leave the society":
>
> Julius Stickel,
> Pauline Stickel,
> Sigmund Stevater,
> Christina Hoerer,
> Elizabeth Sieber,
> Benjamin Feucht,
> Rebecca Feucht,
> Henry Feucht,
> Margaret Feucht,
> Tirza Feucht,

(*f*) That Duss, on April 12th, 1894, (paragraph 20),

> "in the utmost disregard of his trust, secretly entered into an agreement with Hice, Reeves and one James Dickson,"

whereby he agreed to convey to the Union Company the town of Economy, the purpose of it being,

> "to wholly terminate the existence of said society, not only as to the government thereof by the Board of Elders and by the members, but also to the ownership of any property."

(*g*) That, in pursuance of his designs, the bill alleges (paragraph 21) that Duss

> "being unable to obtain the consent of the remaining members to withdraw from said society, upon the receipt of their share of the said assets, is now endeavoring to compel said remaining members to depart by means of intimidation and oppression."

The bill then specifies the oppression in the case of Elizabeth Beck.

(*h*) Then follows (in sections 22, 23 and 24) additional personal abuse of Duss, without connecting it with this alleged attempt of his to get hold of the assets of the society.

Thus paragraph 22 alleges that he is selling liquor without a license and contrary to law.

(Paragraph 23). That the principle of equality has been abolished, and Duss lives in luxury and the other members in squalor.

(Paragraph 24). That Duss is a man of bad moral character, and is unfit to act as spiritual advisor, and that he has been guilty of

> "the gravest duplicity with his cousin, Fredericka R. Kroll, a young girl of some eighteen years of age."

Paragraph 25 alleges

> "that recently said Harmony Society has become dissolved; that all of its purposes and practices established as aforesaid by the founder of said society and by the ancestors of your orators have been abandoned."

(Paragraph 26).

> "That by common consent, this association has ceased to exist as an association, and that if the property thereof has ever been impressed with a trust (which your orators deny, as being contrary to public policy and void in law or equity), such trust

has wholly ceased, and the assets of such dissolved association have wholly reverted to the donors thereof, among whom were the ancestors and intestates of your orators, as hereinbefore fully set forth."

ANSWER.

First Plot:

That Duss ever conspired, as alleged in paragraphs 10, 11 and 12 of the bill, to introduce Dr. Cyrus Teed and his Koroshan Society into the Harmony Society is wholly unsupported by any evidence in the case. No one testified to anything which would justify such a charge. It is denied under oath by Duss and every member of the society in their answer. It is denied by Duss under oath on the stand. Not a single witness is called by the plaintiffs to substantiate it. Even Henry Feucht could not swear to it. And the plaintiffs who made the affidavit to the bill admit that they had no personal knowledge whatever as to the truth of such averments.

It is not true that Duss had been, as alleged in the bill, (paragraph 10) a mendicant or servant * * without visible means of support. On the contrary, he had left the society in 1879 to go to college, had gone out West to Kansas, was employed as a teacher, and subsequently bought a farm, and, at the request of Mr. Henrici, in 1889, he returned to Economy.

It is not true that Mr. Duss, by intrigue, had his mother appointed as the housekeeper of Father Henrici.

It is not true that Duss, prior to his coming to Economy, was the

> "friend and confederate of Dr. Cyrus Teed, a notorious libertine and adventurer, now located in Chicago."

It is not true that Duss sent large sums of money of the Harmony Society to Teed, or that he, from time to time, clandestinely admitted into the town of Economy certain friends of said Teed,

> "among them one Turner Silverfield and a notorious female passing under the assumed name of Miss Emertz."

It is not true that Duss declared,

> "that Teed was the true Messiah and that his doctrines were true."

It is not true that Duss was enabled to, and did appropriate certain valuable and sacred vestments, formerly belonging to Father Rapp, and sent them to Teed.

It is not true that Duss caused to be erected a large and expensive residence in Economy for Teed and the Koroshan Society.

There is no evidence whatever to support these outrageous calumnies and slanders against Mr. Duss, and the testimony in the case is entirely barren of any cause whatever which should have moved a prudent man to make any such charges in his bill in equity.

Besides, as the bill itself alleges, this first plot was unsuccessful and abandoned.

Why was it introduced into the bill?

What the Koroshan Society is, what its practices, what its belief, there is not one word of testimony to show.

And yet, a main part of the plaintiffs' case has been the reiteration that it is a free love society, its house a brothel, and the female members prostitutes.

Second Plot:

(A) *The allegation that Duss, Hice and Reeves illegally combined to pay the debts of the Economy Savings Bank.*

The Economy Savings Bank was a partnership entered into between Judge Hice, Henry Reeves and the Harmony Society through Henrici and Lenz, trustees. The original agreement is dated March 2, 1868, and is in evidence as "Exhibit 48." Being partners in this bank the Harmony Society was liable for its total debts.

Duss had nothing whatever to do with the creation of these debts, and it was not until July, 1890, that he was elected junior trustee, and in the fall of the year 1891 that he discovered that the bank debts exceeded one million dollars ($1,000,000), and that the bank was insolvent. The conduct of Feucht, in stirring up strife in the society, caused rumors to circulate derogatory to its financial standing, and the result was a steady withdrawal of money from the Economy Savings Bank, which steady withdrawal was hastened into a

panic on February 10, 1893, caused by the filing of the Feucht bill against the Economy Society in the Common Pleas of Beaver County.

The trustees of the Harmony Society, as partners, were liable to be sued and held liable for all the debts of the Economy Savings Bank, and it was imperative upon Duss and his co-trustee, in order to save some of the assets of the society to pay some of those debts and prevent ruinous litigation, and perhaps the sale by the sheriff of the property of the society.

Hice and Reeves were unable to pay their share, and Judge Hice, (Record, Vol. II, p. 770), gives his reason, and John Reeves, (Record, Vol. II½, p. 9), gives his reason why each hold and asserts that he is not indebted to the Harmony Society.

(B) *Four Hundred Thousand Dollar Mortgage ($400,000.00).*

Mr. Brooks, (Record, Vol. II, p. 635), Mr. Dickson, (Record, Vol. III, p. 269), and Duss explain in detail the awful financial condition of the Economy Society when Mr. Duss was elected a Junior Trustree. Practically, all of its assets were pledged for its quickly maturing debts, evidenced by notes in different banks, and which aggregated over $1,300,000; temporary loans through Mr. Brooks' assistance had been made; stocks had been sold; and every method of meeting the overwhelming debt of the Harmony Society, which then aggregated some fifteen hundred thousand dollars ($1,500,000), was made by Mr. Duss, until it became imperatively necessary that a large loan on long time should be made, which would give him ample time

to realize full value from the assets and pay off without loss by depreciated sales the debts of the society. Mr. Duss at first wanted a long loan or mortage of $800,000. Mr. Brooks said this was impossible to obtain, and finally, by Mr. Brooks' personal solicitations, first, a loan of $102,000 was obtained, and later, a loan of $400,000 from Harry Darlington, trustee under J. N. McCullough's will, was arranged for, to secure which latter the mortgage in question was given. The time was five years, with the right to anticipate.

That this loan was made for any other purpose than that stated is wholly unsupported by any evidence in the case. It is malignantly and falsely malicious to say that Duss, Hice and Reeves intended to use this mortgage to sell the property and purchase it for themselves, and dismember the society.

It is maliciously and gratuitously slanderous and libelous to make such an assertion. There is no evidence to support it, and Duss, Hice and Reeves all swear to the contrary.

The mortgage was given as a necessary financial provision to meet the then emergencies of the society. Every member of the society, except the Feuchts, expressly agreed by a writing, dated December 20, 1892, a copy of which is annexed to the answer as Exhibit G, to the execution of this mortgage.

It is not true that Mr. Henrici was *in extremis*, and was not cognizant of its contents. On the contrary, the testimony of Mr. Brooks, (Record, vol. III, p. 162), Mr. Duss, (page 2638), and 'Squire Breitenstein show that Mr. Henrici was perfectly rational and fully competent to execute the mortgage.

See also Judge Hice, (Record, vol. II, pp. 724, 725).

Agreement of 1892.

Power to borrow money as given not only under the agreement of 1847, but expressly ratified and confirmed by those of 1890 and 1892.

(C) *One hundred thousand dollar mortgage—$100,000.*

This was given, and money borrowed, in June, 1893. It will be remembered that Mr. Duss originally wanted $800,000.00, but only secured $400,000.00. We were in, or threatened with, a panic; and Mr. Duss, (Record, vol. II, p. 843, 844; vol. III, p. 509), explains the purpose of the loan.

It has since been paid off.

(D) *Sale of the dividend-paying stocks, amounting to $2,000,000.00, so the bill alleges, for Duss' unlawful purposes.*

What the stocks were the Harmony Society owned when Duss was elected junior trustee; how they were pledged for debts then existing; when and for what sold, and how the money was disposed of; is shown in that part of our brief on the financial condition of the society, and Mr. Dickson's statements.

See Exhibits 76, 77, 79.

The stocks were all sold for the highest obtainable prices, and the proceeds applied to the payment of debts.

(E) *That Duss, by fraud and misrepresentation induced members to withdraw, and by so doing drove out of the society its leading men.*

There is not one item of proof in support of this. Not one witness swears to it.

Of the withdrawing members, Henry Feucht, Julius Stickel, Samuel Siber and Moritz Fredericks were examined.

Neither Feucht nor Stickel pretended Duss induced either to withdraw, and Samuel Siber, (Record, vol. III, pp. 428, 429, 431, 432), and Moritz Fredericks, (Record, vol. II, pp. 589, 591), says Duss tried to persuade each to remain.

Not one single person who withdrew was called to prove this allegation—*not one*—though many are alive and could have been called.

Mr. Duss, (Record, vol. II, p. 849; vol. III, p. 520) explains his conduct as to each.

See also testimony of J. Twin Brooks, (Record, vol. II, pp. 646, 650), and Judge Hice, (Record, vol. II, p. 764; vol. III, p. 274).

Why did so many withdraw?

Because of the Feucht disturbance and litigation.

Just as Count De Leon, in 1831, caused internal dissension and trouble, Henry Feucht did in 1890, 1893.

Count De Leon caused 175 members to withdraw and get $125,000.00. Feucht 17 for about $75,000.00.

Not one single demand for membership has been made since Feucht's bill was filed, and this trouble arose.

Before that, in 1890, nineteen (19) joined, and afterwards three (3).

(F) *Secret arrangement by Duss with Hice and Reeves as to conveyance to Union Company.*

This has already been fully treated of. We refer to the testimony of

Mr. Brooks, Record, vol. II, pp. 644, 645; 694, 702;
Judge Hice, Record, vol. II, pp. 731, 732;
James Dickson, Record, vol. II, pp. 786, 791, 792;
John Reeves, Record, vol. III, pp. 235, 236;
Mr. Duss, Record, vol. II, pp. 877, 878, 897;

As to the property of the Harmony Society conveyed to the the Union Company, and what was not conveyed, see

Exhibit No. 90.

(G) *Duss forced withdrawals by cruel treatment.*

The case of Elizabeth Beck and of Moritz Fredericks are mentioned.

Mr. Duss had nothing to do with either of them, (Record, vol. III, pp. 536–538), and was actually opposed to the removal of Miss Beck. As to Fredericks, see Record, vol. II, p. 870.

Elizabeth Beck's case is shown by the testimony of Fredericka Mountz, page 1378 of type-written testimony, Dr. J. Y. Boyle, pages 2279, 2285 of type-written testimony; Christian Kolb, pages 730–735 of type-written testimony; Henry Feucht, pages ——, and Mary Naugle, pages 2271–2279 of type-written testimony; Louisa Scharf, 2285–2293 of type-written testimony.

There is absolutely no evidence of maltreatment of Mr. Fredericks. Feucht's testimony, page ——, is hearsay.

When Mr. Fredericks was on the stand, as a witness, he did not so testify.

(H.) (Paragraph 22.) *Duss is selling liquor without license and contrary to law.*

Even if this were true, it could have no application to this case; but it is not true, and there has been no evidence sustaining it.

Up until the time of the Brooks law, the society sold its own manufactured product, chiefly wine, and after that law was passed the society was advised that it could not sell its own product without a license. The result was, that the trustees applied for and obtained a wholesale license from the Quarter Sessions of Beaver County, and when that license expired the court refused to renew it, merely because it was not necessary. While the society had the license, and in order to help it to work off its large stock of wine, it bought and sold some whiskey.

As will be shown in another place, during the entire existence of the society it manufactured and sold whiskey, beer and wine down until the revenue laws, passed during the war; it then stopped the distillery, but it always manufactured and sold wine, and it always distributed wine and beer among its members.

(Paragraph 23.) *That the principle of equality has been abolished, and Duss lives in luxury and the other members squalor.*

The testimony of Henry Feucht and Julius Stickel in support of this charge has been referred to.

It does not prove the charge, even if what they say is true.

On the contrary, the following witnesses testify that this charge is wholly untrue, and that each member of the society is treated alike, and that no one receives more than another:

Henry Breitenstein, pages 1951–61, 1977–9 of type-written testimony.

Fredericka Muntz, page 1380 of type-written testimony.

W. H. Breitenstein, Record, vol. III, pp. 371–373; 376, 377.

Carolina Molt, Record, vol. III, pp. 455, 456.

Rudolph Waggoner, pages 2047, 2050 of type-written testimony.

John S. Duss, Record, vol. III, p. 538.

Not a single member of the society makes this objection.

(1) *Fredericka Kroll and Weggle.*

(Paragraph 24.) This is the most vicious and untruthful and malignant paragraph of the bill. It charges Mr. Duss with improper relations with his cousin, Miss Fredericka Kroll, a young girl of eighteen years of age. And when the plaintiffs who swore to the bill were examined, as they were on the stand, each answered that he had no personal knowledge of the truth of that charge.

The witnesses called in alleged support of this averment are Henry Feucht; who swore to declarations made by a third person, Schied, accusing Duss of intimacy with Fredericka Kroll. As said elsewhere, his evidence is wholly hearsay, and of the vilest character.

Weggle was the other witness to sustain this charge, and he testified to what was a plain palpable lie on its face: That he

discovered Mr. Duss and Miss Kroll in the parlor or public room of the Great House, in Economy, in a most compromising position, with the door open from the hall, and the windows with shades up. Through this room was a passage-way to and from the room of Father Henrici and the dining room. It was used as a passage-way, and much frequented. Weggle fixed definitely the time when he made this discovery as the month of August, 1891 (620 of type-written testimony). That the door was open, and he stood in the door watching them so long as it took him to count fifteen (626 of type-written testimony). It was in the evening after supper, between six and seven o'clock, and still light (623 of type-written testimony). That the girl said her name was Ricka Kroll (622 of type-written testimony); and that when Weggle made his presence known, the girl jumped from Duss' lap, and ran out of the room (620, 621 of type-written testimony), and then Duss talked with Weggle—said it was his cousin, and he was having some fun with her, and that Weggle should not mention it (621 of type-written testimony). He could give no description of the girl, her face, hair, size, or appearance (629, 630 of type-written testimony). Henry Feucht had sent for him (Weggle) and he went to Feucht's house and told him this story (634 of type-written testimony). Both doors in the room were wide open (630 of type-written testimony). He had lost two cases against the society (622 of type-written testimony).

This is so improbable on its face that it would require the strongest kind of corroborating proof to induce its belief. The case is not only barren of any corroborating proof, but the witness, Weggle, afterwards, on the stand, deliberately recanted, and stated that the whole story was false and utterly untrue, and that he never had seen Duss in a compromising

position with Fredericka Kroll, or any other woman (761–765 of type-written testimony).

The most conclusive answer was made to this testimony of Weggle's, entirely irrespective of Weggle's recantation.

In the first place, it was proven beyond question that Miss Kroll left Economy before August 1, 1891; that she settled her accounts at the store, and the books in which the entries were made show the date of July 27, 1891, (1165–1168, type-written testimony). The books are in evidence as Exhibits 45 and 46, and show her signature and her name and the entry made as to her account, July 27, 1891.

In addition to this, Barbara Laurent, formerly Sohn (1105, type-written testimony), testifies that she went to live in the Great House in July, 1891, and that Weggle's story was not true (1113, type-written testimony).

Magdalena Schurr was living at the Great House in 1891, and she says Ricka Kroll left in July, 1891, and that Barbara Sohn took her place, she says the Weggle story is not true (1129-1130, type-written testimony).

Charles Miiler lived in the Great House in 1891, and he says Weggle's story is not true (1194, type-written testimony).

Rudolph Waggoner was the bookkeeper for the society, and he corroborates Ricka Kroll's testimony as to the date when she left Economy (1192, 1193, type-written testimony).

Mrs. Emertz went away with Fredericka Kroll, and she testifies it was the latter part of July (1229, 1230, type-written testimony). That she talked with Henrici, who approved of her going to Teed's.

Fredericka Kroll indignantly denies, under oath, the truth of Weggle's story (1165, etc., type-written testimony). She says Henrici knew where she was going, and told her to go.

It was sought to contradict Miss Kroll, and to show that she must have left Economy in August instead of in July. A letter dated Chicago, August 27, 1891, is introduced. Miss Kroll's testimony on this and the letter itself show that there is no contradiction, and that her language in the letter as to the fact that she had already been in Chicago three weeks was not intended to be precise and definite as to time. Certainly an indefinite expression of this kind could not be held to overcome the testimony of the numerous witnesses called in this case to show that Miss Kroll did leave Economy before August, 1891.

John S. Duss, under oath, also denies the charge. See his evidence —— page.

Testimony of Christian Kroll, (646.)

This leaves the charge against Mr. Duss of improper relations with Fredericka Kroll as one of the basest and most cruel calumnies and libels that could be made against a man and against an innocent girl, and parties to a litigation who would descend to such baseness unmistakably stamp the character of their suit.

The only other evidence as to immorality on the part of Mr. Duss is the testimony of John McNamee, which it is attempted to torture into a charge of impropriety.

McNamee is one of the claimants, and he says that when he was at Economy, on November 30, 1893, with one Cap-

tain Siebold, he saw Duss sitting in a room with a girl on his lap, and he saw this looking through the window from the street (658, type-written testimony).

Captain Seibold, who was with him, says that this is not correct, and that there was not a girl sitting on Duss' lap, but on the lounge along side of him (1200, type-written testimony).

This testimony does not conflict with that of Mr. Duss. Siebold does not attempt to testify as to the location, and Mr. Duss says that he was not within a half a square of that end of the house when McNamee claims to have seen him with the girl on his lap.

Mr. Duss, himself, in McNamee's presence, down at the Great House, demonstated that McNamee was mistaken, and that if he, McNamee, had seen what he said he saw, on the evening of November 30, 1893, he would have had to look through two brick walls and a wooden partition to do so. Mr. Duss also, under oath, denies the truth of that story.

See his evidence, page —.

OTHER QUESTIONS.

There were several isolated allegations of the plaintiffs' which are hardly necessary to be dwelt upon here—a full consideration of which the court can see in the master's report.

Among these are the life insurance policies of Mr. Duss, and what was called the Feucht settlement, where he signed a paper exonerating Mr. Duss.

See, also, the appellant's complaint that the Harmony Society does not now run a store, keep a tavern, have a shoemaker, a tailor, a silk factory, a cooper or a carpenter, as the society did when its members ran into the hundreds, as it would be foolish to do with a membership of ten.

The reply from Mr. Duss's standpoint is that, when he was elected as junior trustee, the society was almost bankrupt, and that, upon investigation, he discovered that it cost, for several years prior to 1892, under Mr. Henrici's management as trustee, $100,000 more per year to keep up and support Economy, the town where the society was located, than the total income of the society.

See, as the evidence on this:

Hice, (Record, vol. III, p. 215).
Brooks, (Record, vol. III, p. 158).
Duss, (Record, vol. III, p. 525).

For the last nine months of 1892 it cost, to run Economy, $74,300 more than the income of the society, (Record, vol. III, p. 294).

Mr. Duss started in to economize, and with the following results for the next three years:

	Expenses.	*Income.*
1893—	$66,319.07	$46,244.46
1894—	45,618.56	28,490.05
1895—	49,719.02	28,490.03

The master's report gives at some length the facts in reference to this.

FINANCIAL STATEMENT.

Mr. Duss was elected Junior Trustee on the 28th day of July, 1890, (Record, vol. III, p. 554). He had, therefore, no connection whatever with the business management of the Harmony Society. He had not incurred a dollar of its indebtedness, and he was entirely ignorant of what the facts were connected with it. He was alarmed by receiving through the mails notices of the maturity of notes in different banks, and set himself to work to find out the facts. It was almost impossible to do this, because Mr. Henrici kept no books whatever, except a book to show the number of employees in the employment of the Harmony Society. There was no book showing the income of the society, or its debts, or what its property consisted of. It was only by the greatest exertions that Mr. Duss, about December, 1891, got an approximate idea of what the truth was, and, to his amazement, he then found out that the financial situation of the society was substantially this:

Harmony Society owed on notes rapidly maturing, including five mortgages,	$ 393,502 56
It owed on account of the Economy Savings Bank, which really were debts due on demand,	1,081,456 02
Making a total indebtedness of	$1,474,958 58

To meet this Mr. Duss found that the society had, of available assets, exclusive of real estate, $117,444.96.

The society had pledged as collateral with the banks stocks and bonds valued at $505,900.00 to secure the payment of loans aggregating $291,558.00.

He also found that the banks that held the notes were becoming uneasy, and desired reductions of the same as they respectively matured; that the withdrawals from the Economy Savings Bank, although by no means what then might be termed panicky, yet they were, to a considerable amount, and the bank had no assets from which to derive any considerable amount of money.

The bank's chief creditors were the two corporations, the Beaver Falls Cutlery Works and the Beaver Falls File Works, which owed it in the neighborhood of $500,000, and the stock in these two works was owned chiefly by the society, but, in part, by Judge Hice and Mr. Reeves.

In a manner, the details of which we give hereafter, Mr. Duss sold, as best he could, the stocks and bonds pledged as collateral; realized in each instance a fair price, and used the surplus to aid him in the Economy Savings Bank, and then, in addition, he borrowed, through Mr. J. Twin Brooks, the Second Vice President of the Pennsylvania Company, from the estate of J. N. McCullough, of which Mr. Brooks was one of the trustees and executors, and is the attorney, first the sum of $400,000 on a mortgage, and, afterwards, the sum of $100,000 on a mortgage.

The result of Mr. Duss' financiering is briefly stated in this way:

When he was appointed trustee the entire debt of the society was $1,474,958.58. It had all its personal property pledged as collateral, and its credit was becoming doubtful.

When this case was argued before Judge Acheson in the court below, in December, 1898, the total indebtedness of the society was $350,000.60. To meet this, the society had on hands, in personal assets, $570,397.06. The society also

owned lands at Economy assessed, for the purposes of taxation, at over $500,000.00.

Mr. Duss, in addition to accomplishing this, was forced by the Feuchts' litigation and controversy to pay out some sixty thousand dollars ($60,000) to retiring members.

It is no exaggeration to state that Mr. Duss saved the society from financial ruin. If it had not been for him, there would have been absolutely nothing for the plaintiff to have fought about, because the assets of the society would have been *nil.*

Given more in detail, the financial situation and the manner in which Mr. Duss met it, are as follows:

At the time Trustee Duss first became informed as to the financial status of the society (*i. e.,*) about December 1st, 1891, (see Record, vol. III, pp. 3, 4, 5, testimony of Duss, also Record, vol. III, pp. 505, 506, 556, 557; vol. II, pp. 897, 898,) he found that its indebtedness amounted in round numbers to about one and one-half millions of dollars (pages 60 and 61); that Henrici was borrowing money for everything he carried on, (Record, vol. III, pp. 5, 6,); that this debt was interest bearing to the extent of probably $60,000 per annum; that the society did not have revenues sufficient to pay the interest on this indebtedness, and that the deficiency was made up by borrowing more money (Record, vol. III, p. 7).

During 1891, Mr. Given, of the Farmers Deposit National Bank, complained about the collateral security which Mr. Henrici had deposited, and wanted additional security for loans advanced to Trustee Henrici (Record, vol. III, pp. 493,

494); that for this purpose the trustees had in course of preparation a second mortgage on the society's brick yard property when a sale of the P., C. & Y. R. R. stock was effected by Duss (Record, vol. III, p. 494).

Mr. Roseberg, of the Bank of Pittsburgh, also was dissatisfied; he complained and wanted his loans reduced (Record, vol. III, p. 494).

Other banks also held paper of the society, namely: The Iron and Glass Dollar Savings Bank, The Allegheny National, and The Monongahela National. Also, The Bank of America in New York (Record, vol. III, pp. 494, 495).

The bonds and stocks of the society were pledged as collateral for all these different loans (Record, vol. III, p. 495).

The indebtedness of the society to the Farmers Deposit National Bank, the Iron and Glass Dollar Savings Bank, and the Bank of Pittsburgh, was $325,550, as of December 31st, 1891, or January 1st, 1892, (see Record, vol. III, pp. 504, 552), (which latter explain a mistake in the date on former page); see also cross-examination, Record, vol. III, pp. 557, 558.

In 1891 the only available assets the society had were a portion of the Monongahela Water Company stock (and some Tenth Street Bridge stock which had been lost was found), and a small amount of stock in the P., Ft. W. & C. R. R., but which put together did not amount to more than $70,000. The Point Bridge stock, for instance, was tied up in an agreement pertaining to litigation pending between the bridge company and a traction company (Record, vol. III, pp. 121, 122); this stock was not a dividend paying stock (Record, vol. III, p. 123). The stock in the Chartiers Block Coal

Company (of which the society had $113,000 par value), was not a dividend paying stock (Record, vol. III, pp. 123, 124). The *L. S. M. R. R. Company's* stock (of which the society had $105,075 par value) had no market value; none had been sold in years, although there had been offers to sell (Record, vol. III, pp. 125, 126).

Arising out of the Economy savings institution was an indebtedness to the State Treasurer of $163,000, a particularly dangerous one (Record, vol. III, pp. 497, 498).

That among the society's holdings were some P., C. & Y. R. R. stocks and bonds, but they were not negotiable; the company had defaulted on the interest on the bonds, and paid no dividend on the stock, and there was no market for them. Henrici said he had sunk $500,000.00 in this enterprise (Record, vol. III, pp. 499–501). See also Record, vol. III, pp. 557, 558.

Thereupon Trustee Duss effected a sale of this P., C. & Y. interest in the winter of 1891-92 (Record, vol. III, pp. 499, 501, 555). This sale replenished the society's treasury some $330,000.00; *i. e.*, $94,000.00 for the stock, and some $240,000.00 for the bonds; also, quieted the banks (Record, vol. III, pp. 499–501); and also, enabled Trustee Duss to pay the $163,000.00 Economy savings institution debt to the State.

Trustee Duss, in the meantime, together with his co-trustee Henrici, instituted legal proceedings against certain parties (Davisons) for the recovery of large timber tracts in Warren and Forest counties, Pennsylvania, which had been practically donated away by Trustee Lenz. This resulted in a recovery of the land and lumber in dispute, (Record, vol. III, p. 501). This property was sold by Mr. Duss for the sum of $67,989.29. (See Dickson, Record, vol. III, pp. 286,

287, and Duss, Record, vol. III, pp. 501-520). Inasmuch as the society's lumber operations had not been profitable, (Record, vol. III, p. 521,) this was certainly a very good turn for the society.

The Economy savings institution debt, of considerably over a million dollars of deposit money, had been reduced, so that by January 1st, 1892, it was $960,646.00,(see testimony of Duss, (Record, vol. III, pp. 504, 505, 556, 557) that something like $100,000 had been paid into the Economy savings institution prior to Mr. Dickson's schedule); and that the amount was further reduced so that the schedule made for Mr. Brooks, (October, 1892), showed only something like $915,000.00.

Mr. Duss also, as trustee, purchased for the sum of $45,-000.00, Mr. Hartman's interest in the Union Drawn Steel Company, at Beaver Falls; (this was indirectly of considerable benefit to the society, inasmuch as it kept the works at Beaver Falls, where the society still held considerable real estate); he also entered into negotiations with certain gentlemen, and organized the Eclipse Bicycle Company, paying into said company's treasurer the sum of $10,000.00. He sold the Union Drawn Steel Company interest and the Eclipse Bicycle Company interest at $50,000.00 and $15,-000.00 respectively, (Record, vol. III, pp. 502, 503). The result of these ventures was a profit of $10,000.00 in cash, and the repairing of the old cutlery works, making them available for sale. The cutlery works were actually sold December 1st, 1895. (See Dickson's testimony, Record, vol. III, p. 346).

It must be remembered that at and prior to the time (December 1st, 1891) when Trustee Duss first became aware—

approximately—of the large indebtedness of the society, there was no system of books or accounts kept by the society or its trustees showing either the assets or the liabilities of the society, or the revenues and expenditures of the society. (See Wagner, page 2019, type-written testimony; Duss, Record, vol. III, pp. 488, 489; Dickson, Record, vol. III, pp. 269, 274, 275.)

Trustee Duss accordingly requested the senior trustee, Henrici, or Judge Hice—or both of them—to prepare a statement showing the financial condition of the society. This statement was prepared (Record, vol. III, p. 492), and Trustee Duss received it on the day it was signed, *i. e.*, April 1st, 1892 (Record, vol. III, p. 492). This paper is marked Exhibit 50, and is printed, page —— of Record.

In the meantime Mr. Duss had engaged Mr. James Dickson, an expert accountant of the city of Pittsburgh, to devise a system of bookkeeping for the Harmony Society, and Mr. Dickson began his work April 1st, 1892. (Dickson, Record, vol. III, p. 269; also, Duss, Record, vol. III, p. 492.) Exhibit No. 50, the statement prepared by Mr. Henrici, was put into the hands of Mr. Dickson (Record, vol. III, p. 287). This statement, substantially containing a list of the assets and liabilities of the society, was what Mr. Dickson terms (Record, vol. III, p. 287) "daylight" to him; until he saw this paper he had been "entirely in the dark."

Using the Henrici paper as a starter (Record, vol. III, p. 288), Mr. Dickson did devise a system of accounts for the Harmony Society, showing the society assets, its liabilities; also, the results of every department of its industries and operations in general.

See as to lumber business, Record, vol. III, p. 269, *et seq*; as to brick work, Record, vol. III, p. 274; as to different things at Economy, Record, vol. III, p. 276; as to mortgages, judgments, etc., Record, vol. III, p. 274; as to general system of accounts, in which all the business and results are grouped, Record, vol. III, pp. 276, 277.

The society's operations at Economy had been conducted in a manner entailing an annual loss of about $100,000, (see testimony of Hice, Record, vol. III, p. 214; Brooks, Record, vol. III, p. 158; Duss, Record, vol. III, p. 525). The system of accounts devised by Mr. Dickson proved that such was actually the case, inasmuch as the expense of maintenance of Economy for the last nine (9) months of 1892 (April 1st to December 31st), exceeded the income to the amount of $74,300. (Dickson, Record, vol. III, pp. 294, 295.)

During the administration of Trustee Duss changes were made, (such as cutting down the large number of laborers on the pay roll, and the payment of wages to those remaining by the day, and requiring them to provide their own furnishment), (Brooks, Record, vol. II, pp. 651, 652; Breitenstein, Record, vol. III, p. 372; Duss, Record, vol. III, p. 525), which brought about an improvement as follows:

For the year 1893, the expenses, $66,319.07; revenue, $46,244.46; maintenance, $20,074.46.

For the year 1894, the expenses, $45,618.56; revenue, $28,490.05; maintenance, $17,128.51.

For the year 1895, the expenses, $49,719.02; revenue, $28,490.03; maintenance, $16,978.99. (See Dickson, Record, vol. III, p. 313.)

The excess of expense over increase was $16,978.99 for the year 1895, as against $100,000.00 per annum before Duss' time, (see Hice, Record, vol. III, p. 214), and this is called "gross mismanagement"!!

Trustee Duss, to meet the demands on the society finances, (see Record, vol. III, pp. 5, 6, 7), in addition to certain sales of real estate, proceeded to make conversion of the assets enumerated in his answer to this bill, Record, vol. III, p. 8.

Extract from the answer of Trustee Duss, page 82:

> "The sale of those—meaning stocks and bonds—that have been sold has been made absolutely necessary by the pressing financial necessities of the society."
>
> "I have, in connection with my co-trustee, between April 1, 1891, and June 30th, 1894, sold for and applied to the purpose above mentioned the following stocks of the par value and for the price mentioned:"

Stocks, etc.	*Par Value.*	*Sales.*
Bank of Pittsburg,	$ 9,650 00	$ 19,300 00
Allegheny National Bank,	3,500 00	4,690 00
M. & M. National Bank,	8,900 00	13,327 75
Rochester National Bank,	5,000 00	6,140 00
P., Ft. W. & C. R. R. Co.,	2,700 00	4,412 12
Monongahela Water Co.,	129,250 00	152,773 83
Beaver Falls Bridge Co.,	27,000 00	27,000 00
Beaver Falls Gas Company,	41,700 00	25,020 00
The Tidioute Bridge Company,	19,300 00	6,433 33
Birmingham & 10th Street Bridge Company,	2,500 00	7,062 50
United Drawn Steel Company,	50,000 00	75,000 00
	$299,500 00	$341,159 53

Also the following bonds:

Chartiers Block Coal Company,	3,000 00	3,018 00
Point Bridge Company,	13,000 00	13,426 53
L. S. M. R. R. R. Company,	102,000 00	102,000 00
P. C. & Y. R. R. Company,	282,000 00	249,294 20
	$400,000 00	$367,738 73

All the while the Western File Works was still running at a loss of something like $500 per month (one of those Beaver Falls industries that, according to Trustee Henrici's policy, had been kept in operation)—but Trustee Duss finally succeeded in "choking it off" in the summer of 1892, and eventually sold the same for the sum of $61,000.00 and a right of way, or damage, payment from the P. & L. E. R. R., thus developing the sum of sixty-seven to sixty-eight thousand dollars (Record, vol. III, p. 522); see also Dickson, or to real estate item of $67,500.00 (Record, vol. III, p. 303).

The amount of money ($330,000.00) realized from the sale of the P., C. & Y. R. R. having been consumed through the payment of urgent creditors, notably the State Treasurer, the Economy Savings Institution, and on account of the losing operations at Economy, (see Record, vol. III, pp. 499, 500, and Record, vol. III, p. 556), the society in the Fall of 1892 was "again in bad shape." (Record, vol. III, pp. 499, 500.)

It was at this time (October, 1892) that Mr. Duss decided to consult Mr. J. T. Brooks, the general counsel of the Pennsylvania Company, and one of the trustees of the estate of the late J. N. McCullough, (Record, vol. III, p. 506; J. T. Brooks, Record, vol. II, p. 637).

Mr. Brooks testifies, (Record, vol. III, p. 148), (being asked to give approximate figures), that the society owed at that time on paper issued about $360,000.00.

Also, on a mortgage indebtedness, $30,000.00.

And through the Economy Savings Institution about $915,000.00; that the Economy Savings Institution owed a New York bank sixty or seventy thousand dollars, (Record, vol. III, p. 149), and that he (Brooks) secured an extension of the loan, promising personal responsibility for its ultimate payment (Record, vol. III, p. 149).

Trustee Duss, at the time he approached Mr. Brooks, wanted the sum of at least $800,000.00, with which to tide over the affairs of the society through the pending crisis (Record, vol. III, p. 507), arguing—very pertinently, too—that of this sum it would take $367,000.00 to pay the indebtedness to the banks, and that the Economy Savings Institution should also be provided for (Record, vol. III, p. 507).

Mr. Brooks thereupon succeeded in securing a temporary loan of $102,000 on November 2, 1892, from Mrs. McCullough, and this sum was used in paying the society's indebtedness in the Farmers' Deposit National Bank, thus releasing and making available for sale the various stocks and bonds said bank held as collateral security. (Dickson, Record, vol. III, p. 296; Duss, Record, vol. III, p. 507).

On December 21, 1892, a further loan was secured by Mr. Brooks for the society; namely, $400,000, secured by mortgage on some of the society's real estate. (Brooks, page 1416, type-written testimony; Duss, Record, vol. III, 508; Dickson, Record, vol. III, p. 296). This money was deposited in the current cash of the society, and used in paying its debts. (Dickson, page 1841, Record, vol. III, p. 296).

Trustee Duss states that one week after December 21, 1892, (page 2533), when the $400,000.00 loan was secured, the

$400,000.00 indebtedness to the Pittsburgh banks and the bank in New York (arising out of the indebtedness of the Economy Savings Institution), was all paid off; also, other debts of the Economy Savings Institution; also, mortgages on certain property of the society. (See Brooks, page 1417, type-written testimony).

Trustee Duss evidently forecasted the future when he wanted $800,000.00 with which to tide the affairs of the society "through the storm" (Record, vol. III, p. 507), the overwhelming indebtedness of the society and the internal troubles that were brewing—notably the strife caused by the conduct of Henry Feucht—must needs, sooner or later, reach the ears of the public, and precipitate a demand for the payment of its direct liabilities and a run (of 3,000 to 4,000 depositors) on the Economy Savings Institution.

The developments of the campaign along early in 1893 fully support the foregoing view.

Immediately after Mr. Henrici's death, (December 25, 1892), there appeared a threat in print that the Feucht faction were in consultation; that they were going to institute legal proceedings (Record, vol. III, p. 514). This threatened litigation made its appearance in the shape of the so-called "Feucht bill," filed in the Beaver Court February 10, 1893, (Duss, Record, vol. III, p 512); and the filing of said bill, which was published in the press of the day, pretty generally, created a run on the Economy Savings Institution, which almost closed the doors of said institution (Duss, Record, vol. III, p. 512; Dickson, Record, vol. III, p. 297; Reeves, Record, vol. III, p. 512; Hice, page).

During this pressing time it actually became necessary for Mr. Brooks to endorse, personally, notes in order to meet the

pressing obligations, which he did on February 13th or 14th, to the extent of $40,000.00 (see Brooks, Record, vol. III, p. 151; Duss, Record, vol. III, p. 511, when, as the latter says, they were "at the and of the string"). Mr. Brooks also effected another loan of $42,000.00 on May 5th, 1893, and also endorsed another note to the extent of $30,000.00 on May 25th, 1893, (Dickson, Record, vol. III, p. 297; Brooks, Record, vol. III, p. 151). In June, 1893, Mr. Brooks secured an additional $100,000.00 on a second mortgage for the purpose of further enabling the society to further protect its property and develop its unavailable assets, and paying the interest shortly to be due on the $400,000.00 mortgage loan. (See Dickson, Record, vol. III, pp. 297, 298; Brooks, Record, vol. II, p. 641; Duss, Record, vol. II, p. 858.

A summary of the transactions in detail, as between April 1st, 1892, and December 31st, 1895, are given in Mr. Dickson's testimony, and exhibits under said testimony in the case, and a careful compilation of the same shows the following:

TABLE I.

Statement of Assets of the Harmony Society as of April 1st, 1892.

Record, Vol. III, Pages.	Assets.	
284-5, 323.	Stock in Economy Savings Institution,	$ 360,000 00
284-5.	Other stocks,	545,700 00
284-5.	Bonds,	402,509 00
		$1,308,200 00
284-5.	Industrial factories, etc.,	320,503 52
		$1,628,703 52
284-5.	Economy items,	18,873 24
		$1,647,576 76
284-5.	Union Drawn Steel Co., loan,	18,750 00
284-5.	P., C. & Y. R. R., special,	18,466 89
		$1,684,793 65
	Also,	
284-5.	Beeler real estate contract,	3,000 00
284-5.	Beaver Falls contracts, mortgages and judgment,	127,805 17
284-5.	Myers mortgage,	28,922 25
284-5.	Deposit in Farmers Deposit Nat'l Bank,	2,623 46
		$1,847,144 53
	Also,	
284-5.	Economy Savings Institution, special,	28,895 33
284-5.	Beaver Falls Car Works, special,	26,431 70
284-5.	Economy Savings Institution, deposit balance,	62,117 93
	Nominal value,	$1,964,589 49

These values are nominal, no appraisement being made. They were simply entered at this amount to get them on the books.

Also,

Record, Vol. III., Pages.		
286.	Real estate,	Cannelton, Pa.
286.	"	McKees Rocks, Pa.
286.	"	Stowe township, Allegheny Co., Pa.
286.	"	32nd Ward, Pittsburgh.
286.	"	23rd Ward, Pittsburgh.
286.	"	Rochester, Pa.
286.	"	New Brighton, Pa.
286.	"	Collier Township, Allegheny Co., Pa.
286.	"	Economy Home Tract.
286.	"	Leet Township, Allegheny Co., Pa.
286.	"	Beaver Falls.
286.	"	Beaver Falls water power.
286.	"	Warren County land.
286.	"	Philadelphia real estate.

And their debts were:

280.	Bank of Pittsburgh, 4 Notes,	$142,000 00
280.	Farmers Deposit Nat'l Bank, 4 Notes,	60,600 00
280.	Iron and Glass Dollar Savings Bank, 5 Notes,	88,958 00
282.	Hartman Notes,	13,600 00
281.	Powell & Co.	1,874 75
282.	Valley Glass Notes,	4,000 00
		$311,032 75
	Economy Account,	2,685 90
281.	Five Mortgages,	35,350 55
282.	Economy Savings Institution Special,	39,383 36
	Little Saw Mill Run R. R.	50 00
280.	Monongahela National Bank,	5,000 00
		$393,502 56

From the foregoing statement it would seem that the society was in splendid condition; but when we take into consideration that the society was responsible, as before stated, for the indebtedness of the Economy Savings Institution, namely, $1,081,456.02 (Record, vol. III, p. 279) and furthermore sub-divide Table 1 into Tables 2 and 3, the complexion of the matter is changed entirely.

Industrials, etc.	*Nominal values.*	*Worthless and Unavailable.*	*Available.*
Beaver Falls Steel Works,	$263,098 14	$263,098 14	
Harmony Brick Works,	16,554 82	16,554 82	
Economy Lumber Company,	13,942 10	13,942 10	
Economy Planing Mill Company,	8,737 26	8,737 26	
Economy Oil Company,	4,500 00	4,500 00	
Economy Oil Company cash account	13,671 20	13,671 20	
Economy Sundries,	18,873 24	18,873 24	
P., C. & Y. R. R., Special,	18,466 89	18,466 89	
Union Drawn Steel Company Loan,	18,750 00	18,750 00	
	$376,593 65	$376,593 65	
Sundries.			
Beeler Contract,	$ 3,000 00	$ 3,000 00	
Beaver Falls Mortgages, etc.,	127,805 17	127,805 17	
Myers Mortgage,	28,922 25	28,922 25	
Deposit in Bank,	2,623 46		$2,623 46
	$162,350 88	$159,727 37	$2,623 46

Sundries.

Economy Savings Institution, Special	$ 28,895 33	$ 28,895 33
Beaver Falls Car Works	26,431 70	26,431 70
Economy Savings Bank Deposit	62,117 93	62,117 93
	$117,444 96	$117,444 96

The real estate, and also industrial and sundry items in Table 2, were of no immediate consequence, inasmuch as any move toward a conversion of the same would have aroused interest and suspicion on the part of the public, and would have brought about the disclosure of the ruinous condition of the society's financial credit, which, above all things, it was necessary to uphold, the only available item being the $2,623.46 deposit in the Farmers Deposit National Bank, mentioned in Table 2.

Special Statement of Securities Pledged by Harmony Society Held by Bank of Pittsburgh, April 1st, 1892. Explanation of the "Pledged" Column in Table 3.

Record, vol. III.

PAGE.		PAR.	LOAN.
288	150 bonds P., C. & Y. R. R.	$ 75,000	
288	406 shares stock Beaver Falls Gas Co. $100	40,600	$142,000
288	240 shares stock Beaver Falls Bridge Co. $100	24,000	
288	Bonds Little Saw Mill Run R. R.	12,000	
288	Bonds Little Saw Mill Run R. R.	12 00 0	

Held by the Iron and Glass Dollar Savings Bank.

289	3,650 shares Monongahela Water Stock. $25.	89,000	88,958

Farmers Deposit National Bank.

289	178 shares M. & M National Bank. $50.	8,900	
289	78 shares Allegheny National Bank. $50.	3,500	60,600
289	Bonds Little Sawmill Run R. R. Co.	12,500	
289	Bonds P., C. & Y. R. R.	32,500	
289	Second Point Bridge.	13,000	
		$323,000	$291,558
289	P., C. & Y., State of Pennsylvania.	100,900	
289			
289	Little Saw Mill Run R. R. Bank of N. Y.	82,000	
	Grand total.	$505,900	

Besides the foregoing pledges, the Bank of Pittsburgh held 193 shares of Bank of Pittsburgh stock of the par value of $9,650.00 as applicable in general to the loan made to the society. (See Dickson, Record, vol. III, page 290; Duss, Record, vol. III, page 494.)

Statement of the Harmony Society's Securities (Exclusive of Real Estate) their Disposition and Value as of April 1st, 1892.

Shares.	Stocks.	Par Value.	Record, vol. III. Page.	Pledges.	Otherwise Worthless or Unavailable.	Page.	Available.	Page.
	E. S. Bank.....	360,000	290		360,000	1899		
600	Point Bridge.....	15,000	"		15,000	885–7		
386	Tidiout Bridge.....	19,300	"		19,300	1835		
2271	C. B. Coal Co.....	113,550	"		113,550	888 & 1834		
2100	L. S. M. R. R. Co...	105,075	"		105,075	1834		
	Glens'w Oil Co.....	3,000	284		3,000	1822		
500	U. Draw. Steel Co..	50,000	290				50,000	1831
417	B. Falls Gas Co.....	41,700	288	40,600			1,100	1831
483	10th St. Bridge.....	12,075					12,075	1822
70	A. Nat. Bank.....	3,500	289	3,500				
193	B. of Pgh.....	9,650	290	9,650				
270	B. Falls B. Co.... ..	27,000	288	24,000			3,000	1831
178	M. & M. Bk.....	8,900	289	8,900				
27	P.F.W. & C R.R.Co.	2,700					2,700	1831
50	Roc. Nat. Bk.....	5,000					5,000	1831
5170	Mon. Water Co.....	129,250	289	89,000			40,250	1831
	BONDS.							
	C. B. Coal Co.....	3,000					3,000	1822
	Point Bridge...	13,000	289	13,000				
	P. C. & Y. R. R. Co.	276,000	288	75,000	67,600	1829		
			289	32,500				
			289	100,900				
	L. S. M. R. R. R. Co.	110,500	288	12,000	2,000			
			"	12,000				
			289	12,500				
			289	82,000				
	L. S. M. R. R. R. Co.	10,000						
		1,318,200		515,550	685,525		117,125	

The society's liabilities of January 1st, 1896, are $359,812.74 (Duss, Record, vol. III, p. 519; Dickson, Record, vol. III, p. 304,) of which $350,000 was balance due on Darlington-McCullough mortgage, (Record, vol. III, p. 304,) and assets same date exclusive of Economy and Michigan real estate was $570,397.90 (see Dickson, Record, vol. III, p. 308, and Duss, Record, vol. III, p. 519) who testifies that Economy was assessed at $581,457 and Michigan land was worth $10,000.

SCHEDULE "A."

Bills receivable, bank,	$ 87,000 00
Mortgages, bank,	15,000 00
J. T. Reeves & Co., bank,	431 34
Mortgages, judgments and contracts Harmony Society,	40,964 08
Other mortgages Harmony Society,	35,078 06
Accounts and bills receivable, Harmony Society,	22,387 61
Economy items Harmony Society,	21,991 49
Farmers Deposit National Bank, Harmony Society,	9,169 47
Stocks, Harmony Society,	
Chartiers Block Coal Company, Harmony Society,	113,500 00
Point Bridge Company, Harmony Society,	15,000 00
Sundries, Harmony Society,	6,150 00
Sundry real estate items, Harmony Society,	3,766 01
Rochester real estate, Union Company,	3,000 00
New Brighton real estate, Union Company	2,500 00
Leet Township real estate, Union Company,	100,000 00
Sewickley real estate, " "	11,500 00
Beaver Falls real estate, " "	82,959 00
	$570,397 06

TABLE 4.

The entire resources of the society and Economy Savings Institution Bank as of April 1st, 1892, were as follows:

Personal items society, nominal values,		$1,964,589 49
Bank assets, unknown value.		
Society's real estate, unknown value.		
Society's debt,	$ 393,502 56	
Economy's Savings Institution Bank debt,	1,081,456 02	
	$1,474,958 58	

And at that date Trustee Duss had within his reach assets not exceeding $120,000, as follows:

Union Drawn Steel Works, see table 3, par,	$ 50,000 00
Beaver Falls gas stock, see table 3, par,	1,100 00
Tenth street bridge stock, see table 3, par	12,075 00
Beaver Falls bridge stock, see table 3,	3,000 00
P., F. W. & C. R. R. stock, see table 3,	2,700 00
Rochester National Bank stock, see table 3	5,000 00
Monongahela Water Co. stock, see table 3,	40,250 00
Chartiers Black Coal Co, bonds, see table 3,	3,000 00
Cash in Farmers Dep't Nat'l Bank, see table 2,	2,623 46
	$119,748 46

The general statement being as follows:

Personal assets,		$1,964,589 46
Deducting pledged items,	$ 505,900 00	
Deducting unavailable and worthless items,	1,338,941 03	
		1,844,811 03
		$ 119,748 46

$119,748.46 represents therefore the available securities on hand April 1st, 1892.

This item very strongly supports the testimony of Trustee Duss that the society in the fall of 1891 had what amounted to not over $70,000 worth of available assets.

The efforts of Trustee Duss in liquidating the indebtedness of the society which occupied his attention from 1891 up to the date of these reports, December 31st, 1895, required unceasing care and industry.

It is difficult to find language forcible enough to portray the anxiety and troubles through which he passed, to carry out honestly and faithfully the duties of his trust.

Commencing in 1891 he found that utter confusion reigned supreme in the society's business affairs; vast business interests extending from Tidioute to Beaver Falls—complex and varied—farming, manufacturing, banking and a peculiar condition resulting from the society's affairs being administered for many years by Trustee Henrici, who by virtue of his position as senior trustee and spiritual leader, coupled with his indomitable will, managed things according to his own personal ideas.

He was for twenty years prior to his death an old man, having absolute power to do business in his own way without reducing business transactions to record in books of account.

Trustee Duss found tremendous liabilities, amounting to one and a half million dollars ($1,500,000), staring him in the face, and nearly all the sooiety's securities beyond his control, they having been pledged for part of the debt.

He commenced his task with not over $70,000 within his reach.

Of the liabilities, $393,000 were held by three banks in Pittsburgh, who had often renewed the notes, and who were dissatisfied with their collateral and wanted their money.

The debt of the bank in Beaver Falls was due to a very large number of depositors, and nearly all subject to call. The situation was frightful, and it was only by the kindly assistance of Mr. Brooks, who procured loans on long time, that overwhelming disaster was averted.

With the proceeds of these loans debts were paid and securities were realized upon, but new trouble arose, as any attempt to throw these stocks and bonds upon the market would certainly break the price, and the disposing of these items took a long time, but finally resulted in sales being effected at fair prices.

Many of the assets which proved finally available were of such a character that purchasers could only be found after patient effort and often long waiting.

A noted instance in this direction was the stock of the Little Saw Mill Run Railroad, which was sold at par, $110,500, in July, 1895, and until that date could not be sold at any price.

And also the stock and bonds of the Pittsburgh, Chartiers & Youghiogheny Railroad Company, which in 1891 were utterly without market price or value; the stock and bonds were finally disposed of for more than $330,000.

It took time to bring about these transformations. Meanwhile the current business and industries of the society independent of its debts were continued. *Result:* The debts, which were $1,500,000, are now only $356,000; the net maintenance of Economy, which formerly was in round numbers

$100,000 per annum, was in 1895 only $16,879, and the remaining assets were and are being developed, (as, for instance, the stock of the Chartiers Block Coal Company, of which the society holds a large block, and which is now worth its par value, viz., $113,000).

The transactions of the society are now regularly recorded upon proper books of account, and full information of its affairs is readily obtainable. (For tabulation of the society's affairs January 1st, 1896, see schedule "A," which schedule, exclusive of Point Bridge stock, shows actual values, see testimony of Duss, Record, vol. III, p. 519).

These results have been accomplished under the most trying circumstances, arising from internal dissensions in the society, created and fostered by some of the members who have since withdrawn, as well as by enemies without the society, greatly embarrassing Trustee Duss in almost every attempt he made, heaping contumely and personal abuse upon him, both in public and private; instituting vexatious litigations, clouding the title of the society to all its assets, and creating suspicion on the part of the public and financial institutions against his management, and this, too, throughout a season of the severest financial distress this country has ever known.

POWER OF TRUSTEES.

Down until 1847 the agreements of the society do not speak of or determine what the industries of the society shall be. That there were to be external industries which should bring a profit to the society is evident from the history of the organization down to his date. The society was to make money for the support, maintenance and education of its members, and to do this it had to engage in business.

What the business was in which it would be engaged is not determined by the articles or agreement or any of them.

This was, in the first place, left to the discretion of the patriarch, George Rapp, under the patriarchial form of government, and to Frederick Rapp, his adopted son, who was appointed general agent of the society to transact its external business.

When Frederick Rapp died, in 1834, and it became necessary to appoint his successor, George Rapp, being the patriarch, was also appointed the general agent by an agreement dated July 5th, 1834, and signed by all the then members, and recorded in the Recorder's office of Beaver County on August 7th, 1834, in Deed Book L, page 577.

This paper, which is in evidence as Exhibit No 85, recited that Frederick Rapp

> "was for a series of years the agent in temporal affairs of the Harmonie Society, carrying on in his own name *all the external business of said society* and taking to himself the titles to real estate, as well as the evidence of claim arising out of the *various transactions of said society.*"

Now, on account of the death of the said Frederick Rapp, the Harmony Society

> "Do hereby nominate and appoint George Rapp, of Economy, in the county of Beaver, the general agent of said society in all its temporal affairs."

Then follows an enumeration of the powers, which are quite broad, and which, among others, are as follows:

> "To carry on by himself, or through the agents whom he is hereinafter authorized to appoint, all the dealings and traffic of said society of every description."

When George Rapp died in 1847, the agreement of August 12th, 1847, was made and executed by all the members of the society, and among other provisions were the following:

> "*Article 4th.* We do further ordain and establish a Board of Trustees for the exclusive management of the external business and affairs of the society, which board shall consist of two persons, who shall be members of the Board of Elders, and their successors, who shall be appointed as hereinbefore provided. Romelius L. Baker and Jacob Henrici shall be the first Board of Trustees.
>
> "*Article 5th.* The said trustees shall jointly and severally have and exercise the powers following, to-wit:
>
> "1st. In their own names or that of either of them, or otherwise, to purchase and sell, deal, barter, exchange and traffic, make all contracts and bargains, in the prosecution of the business, to invest the funds in stocks and other securities, and make transfers and assignments, to collect debts, receive and pay out moneys, settle claims, compromise disputes, institute legal proceedings, appoint and dismiss agents, clerks and attorneys in fact, and at law, and generally to transact all the external business affairs of the society.
>
> * * * * * *

> "5th. The powers hereby vested in the said trustees shall extend to and embrace all the property of said society, real, personal or mixed, whether standing or held in the name of the late Frederick Rapp, the said George Rapp, or in any other name or form whatsoever."

The things which these trustees were to do under this article, were, in its own language, as follows, to have—

> "the exclusive management of the external business and affairs of the society."

There is no limitation to this. It is all the external business. All the external affairs of the society. Every kind of business is within the scope of the words—whether it be the manufacture and sale of whiskey, or silk, or beer, or cutlery, or iron, or steel; or the digging, sale and transportation of coal; or the building of railroads, or the running of a bank.

Each one is business. Each one is part of the external business and affairs of the society, and the trustees engaged in it.

And so, the 5th paragraph of the bill still further enlarges —if that were possible—the powers of the trustees.

Under the previous language, perhaps, the powers of the trustees were joint, and not several; and now comes the 5th paragraph and makes the powers joint and several, and each of the trustees had the power of both of them.

They might in their own names (not in the names of their principal), or that of either of them,

> "or otherwise,"

do what?

Look at the powers—

Purchase;

Sell;

Barter;

Exchange and traffic;

Make all contracts and bargains in the prosecution of the business;

Invest the funds in stocks and other securities.

Make transfers and assignments;

Collect debts, receive and pay out moneys;

Settle claims;

Compromise disputes;

Institute legal proceedings;

Appoint and dismiss agents, clerks and attorneys in fact and at law;

"And generally to transact all the external business affairs of the society."

What possible external business was it which the trustees might not legitimately carry on under these delegated powers?

Could anything have been broader?

Then, according to the fifth portion of this 5th Article, the entire property of this society is subjected to this board and its unconfined powers.

If there could be a question as to what fell within this power given to the trustees to carry on business, the history of the Harmony Society for the last fifty (50) years would be a conclusive answer to the objection now taken—that the outside industries, in which Henrici and Lenz invested the money of the society, and especially the Economy Savings Bank, were beyond the powers of the society.

Judge Hice's recollection goes back further with particularity, perhaps, than any other witness, and beginning on page 1530 and running to page 1559 of type-written testimony, he gives the different external business enterprises and affairs in which the society was engaged, and they included, beginning with the year 1858, the following enterprises:

Grist mill;

Saw mill;

Various mechanical pursuits, as tailoring and shoemaking.

They were also engaged in manufacturing

Silks;

Cottons;

Woolen goods.

They were interested in and connected with the mining of coal and operating the coal mines at Cannelton, Beaver county. They had interests there in connection with John White, and they mined coal and shipped it over what was known as the Darlington & Cannelton Railroad to New Galilee.

They shipped their coal mostly east; some to Cleveland, and some to New York (Record, vol. II, pp. 707, 708).

Here you find the trustees engaged in a joint enterprise in 1858, which had then been going on for some time.

They were also largely engaged in the manufacture of oil from shale, and they refined it at Cannelton.

In 1860, after the discovery of oil up the Allegheny, they were engaged in the producing of oil there. That commenced in 1861, and was carried on in a very large way.

They were also largely engaged in the lumber business, and had large and valuable pine and other lumber tracts. They had a large sawmill up the river, and rafted the lumber down the Ohio river.

In 1859 the society bought five hundred (500) acres of land at Beaver Falls, and cut it up into lots and sold it, and they had continued that business ever since; upon that tract is located the town of Beaver Falls. It then had 40 or 50 people, and it now has a population of between 9,000 and 10,000.

They bought additional farms, and laid them out in lots.

In 1867 the trustees became interested in the cutlery business at Beaver Falls, in connection with Mr. Hussey and Mr. Howe, of this city, and Mr. Binns and Mr. Brown (Record, vol. II, p. 711.)

In 1868 they formed a corporation out of the partnership, and in 1870 and 1872 the society bought out the interest of Hussey, Binns, Howe and Brown.

The trustees were also engaged in Beaver Falls in the manufacture of pocket and table cutlery. In 1872 Mr. Henrici bought out the other parties interested in that works and

then sold a portion of the interest to Judge Hice and Mr. Reeves.

Mr. Henrici insisted on carrying on the cutlery and file works in order to benefit the sale of lots (Record, vol. II, pp. 712, 713.)

The file works were started by Foshey and Fessenden in 1869, and in 1875 a limited partnership was formed, in which the trustees, Henrici and Lenz, became partners (Record, vol. II, p. 714). This continued until 1884, when Henrici bought out the interest of Fessenden and Foshey.

The Economy Savings Bank was instituted in the year 1868. The original articles of partnership are in evidence as Exhibit 48, and it was organized

> "for the purpose of carrying on the banking business in Beaver Falls." (Record, vol. II, p. 715.)

As its name —"Economy"—designated, it was known to be the bank of the Harmony Society, or Economy. It grew with the growth of Beaver Falls, and was carried on until it closed in 1893. It received deposits generally and largely, and at one time had upwards of 3,000 depositors. It had, from time to time, made and declared and divided dividends, but owing to the policy insisted on by Mr. Henrici—that the Savings Bank should furnish all the money necessary for the cutlery works and the file works, other enterprises of the Harmony Society—the Savings Bank was ruined.

The trustees were also engaged in the glass business at Beaver Falls. It was first carried on in the name of C. G. Modes & Company, and later, probably, in the name of the Trustees. (Record, vol. II, p. 718.)

The trustees also had a saw mill at Cannelton, in connection with the mining and railroading there, and carried on a sort of a car shop there, and built and repaired cars, (Record, vol. II, p. 718).

They also had a saw mill at Economy. Also a planing mill at Economy.

They were also engaged in the coal business at Saw Mill Run, opposite Pittsburgh, the coal mines being at Bankville, and they mined and ran the coal down to the river and shipped it, and also shipped by railroad.

They are also largely interested in the Chartiers Block Coal Company.

They built, or largely aided the building of the Pittsburgh, Chartiers & Youghiogheny railroad, which connected with the works of the Chartiers Block Coal Company. They had 7,000 shares of stock of the par value of $50.00 each.

They were interested with Mr. Waterbury in the extraction of oil from shale; they had quite a large interest, and had, as partners in the business, a man by the name of Crum and Oliver P. Scaife (Record, vol. III, p. 170).

They also carried on the glass business in Bridgewater, in 1857 and 1858 (Record, vol. III, p. 171).

They also carried on a distillery and a brewery.

They also invested largely in the Pittsburg & Lake Erie Railroad Company, having at one time an interest there amounting to $400,000.

They also engaged in the manufacture of steel at Beaver Falls, buying out the firm of Able & Pedder, and ran that works from 1877 to 1893.

They also engaged in the manufacture of axes at Beaver Falls, and carried it on quite largely (Record, vol. II, p. 720).

They established the Beaver Falls Car Works for the manufacture of cars and carried on the business largely.

They engaged in the manufacture and sale of bricks quite largely.

They were interested in the limited partnership of H. M. Meyers & Co. in the manufacture of shovels.

They were engaged in the manufacture of trusses.

They were also engaged in the coal works at Beaver Falls known as the Beaver Falls Coal Works.

They also carried on the dairy business at Economy.

They also were interested in the Union Drawn Steel Company, (Record, vol. III, p. 176).

They were interested in the Little Saw Mill Run Railroad, (Record, vol. III, p. 184).

Also, in the Pittsburgh Southern Railway Company, (Record, vol. III, pp. 191, 192).

The practical construction by the trustees of the society, then, from the earliest date at which we have any information, is, that the trustees had the power to engage in any outside industry they saw fit, and they did engage in it just as they saw fit, and to any extent they saw fit, and not a single member of the Harmony Society has ever been heard to say that the power of the trustees was limited as to outside business.

They carried on the banking business from 1868 to 1892. On the faith of their credit a debt of over a million of dollars was created. It is incredible that they could be allowed to set up—as the heirs of some deceased member now allege—that this debt was invalid, and the trustees could escape payment of it.

Even if there was any doubt about the power under the wording of the agreement of 1847, the agreement of 1890, signed by all the then members, including all the Feuchts even, expressly ratified and approved all that the Board of Trustees had prior to that time done. The following quotations from that article are pertinent:

> "*And Whereas*, Said society, and the undersigned, the present members thereof, have received and enjoyed, and do now enjoy, the benefits and advantages resulting from the management and regulation of the internal affairs thereof by the Board of Elders as aforesaid, as also the benefits and profit of the external business and affairs thereof, managed and transacted by those who constituted the Board of Trustees as aforesaid, and it is deemed right and proper that we, the undersigned surviving members of the society, who entered into the articles and compact aforesaid, and the others who have since become members as aforesaid, should recognize, approve and reaffirm said articles, and approve and confirm what has been done for and on behalf of the society, under and in pursuance thereof."

> "*Now, Therefore*, Be it known to whom it may concern that we, the undersigned, the surviving and present members of the Harmony Society, at Economy, aforesaid and all the present members of said society, do severally, and each for himself, covenant, grant and agree to and with the others, and each and all the other members aforesaid, and signers hereof and with those who shall hereafter become members, as follows, that is to say:"

* * * * * * *

"3d. We do also hereby approve, ratify and confirm all acts, matters and things done, transacted and performed by the Board of Trustees of the Harmony Society, constituted, first of Romelius L. Baker and Jacob Henrici, until January 11th, 1868, afterwards, and from that date until January 21st, 1890, of Jacob Henrici and Johnathan Lenz, and since the last mentioned date, of Jacob Henrici and Ernest Woelfel, hereby ratifying, confirming, holding, declaring as good and effectual in law and in equity, all acts, matters and things done, transacted and performed by each and all of said trustees, in the purchase and sale of personal property, and in the making of contracts, investment of funds, purchase, sale and transfer of stocks, bonds and other securities, loaning or borrowing money, collection and payment of moneys, settlement or compromise of claims or disputes, in the institution and prosecution of legal proceedings, in the employment and discharge of attorneys in fact, and at law, in the making of donations, in the purchase of real estate, and in the sale thereof, in the execution and delivery of deeds, conveyances, transfers and assignments, whether of and pertaining to real or personal estate, in the execution or delivery of notes or obligations of any kind, and generally all acts heretofore done by said trustees, in the conducting, managing and transacting of the business of the society, and whether done by said trustees, or either of them, severally and in his own name as trustee, or jointly in the joint names of himself and his co-trustee."

DUSS' ALLEGED DECLARATIONS TO JULIUS STICKEL.

Stickel's testimony on this will be found, in chief, Record, vol. II, pp. 533, 534, 535, 539; and his cross-examination, Record, vol. II, pp. 565–568.

He says that he had three conversations with Mr. Duss, one in the garden at Economy, on October 30th, 1892, (Record, vol. II, p. 565):

> "Q. Mr. Stickel, won't you tell me what this conversation was that you say you had with Mr. Duss in the garden at Economy?
>
> "A. Well it was the same, just the real conversation what I told yesterday about. We had a talk about financial affairs, and I asked Mr. Duss--he came in the garden, and I seen on his face like a little trouble, and I asked him if he needs money, and yes, he said, he didn't know how to get up money, and I made fun about it, and I said, 'There is some borrowed money in store there, to get it out,' I said, 'We have plenty of money.' And so we had conversation about different things about our business there, but I mentioned this because this was very particular to me, that Mr. Duss said, 'I made up a plan already in Nebraska how to divide the wealth of Economy, and for to come there to Economy to give advice to some of the members, or council members or others and to get a few thousand dollars out of this advice, but now I have it in my own hands and can do as I please.'
>
> "Q. Did he use the word plan?
>
> "A. He said in German that he broke his head, and that's the same in German as if he had a scheme.
>
> "Q. He said he broke his head?
>
> "A. Yes, sir.
>
> "Q. And do you think that is equivalent to a plan?
>
> "A. Yes; just the same.

"Q. Did he state how he happened, in Nebraska, to think about the Harmony Society?

"A. I don't remember that.

"Q. Was there any discussion at the time in reference to the probable duration or termination of an organization like the Harmony Society?

"A. Why, I can't say that.

"Q. Did you and Mr. Duss talk at all about the probabilities of the duration of a society like the Harmony Society?

"A. Not at that time, that I remember. I said before, we talked different things, but I can't say positive what it was, sir, but this was the particular thing to me.

"Q. Did he say that he had broken his mind in Nebraska at the time that his mother joined the society, in thinking about it—do you remember that?

"A. I don't remember that he said the occcasion of his thinking at all about the Harmony Society was the fact that his mother had joined it."

* * * * * * *

"Q. In the conversation that Duss had with you, did he say what the occasion was of his breaking his mind in Nebraska with reference to the Harmony Society—how he happened to think of it at all?

"A. I don't know the reason he said that to me; I don't know.

"Q. Did he say how he happened to think in Nebraska at all about the Harmony Society?

"A. Oh, I believe just for making money—that's what I believe.

"Q. Not what you believe, but did he say that?

"A. He said, to make a few thousand dollars out of it; that's the reason I can say that.

"Q. Can you give us the date of that conversation?

"A. Yes, sir; the 20th of October, 1892.

"Q. Have you got the memorandum that you say you made of it?

"A. Yes, sir.

"Q. Have you got it here?

"A. I haven't got it here, but I can bring it any time you want it.

"Q. Will you let us see it?

"A. All right, I will bring it over to you.

"Q. How did you happen to make a memorandum of it?

"A. Because it was very particular to me; because I seen it was a scheme.

"Q. And that Duss was telling you?

"A. Yes, sir.

"Q. You were at that time on friendly relations with Duss?

"A. Oh, yes.

"Q. Was there any fight in the society then?

"A. There was a fight, so to say, always between the members. I had a fight with Mr. Duss—he had no reason to fight with me—when they expelled Mr. Feucht. Then we had a fight; Mr. Duss said: 'Now, if you want to stick to Feucht, you will find out how soon we can get rid of the whole business'—'I don't know how to say it in English, but in German, so to say, 'You will find out that you will get out of this, if you stick to Feucht.' I called for some things that were fetched in the house, and then he give me hell (?) for that. And then Mr. Duss seen he couldn't stay to me in an enemy way, and he started to be a friend to me again; and he was always in a friendly way again.

"Q. Then you were in a friendly way, notwithstanding that you had had these differences with Duss. As I understand you, you and Duss were still friends, notwithstanding that you had this fight that you tell us about?

"A. Yes, sir; I didn't care for it; because I thought that way, if a man is not mad by me I am not mad by him; if I say something to him and he don't care for it, then I don't care for it.

"Q. At the time of this conversation, had the Feucht bill been filed in Beaver county?

"A. I don't remember that positively, if it was before Christmas, or if it was after Christmas, but I remember that they expelled Feucht at that time.

"Q. Well, it was after Feucht had been expelled?

"A. I believe so.

"Q. Was it before or after Feucht had been taken back?

"A. I can't state that, because that was all gone so far from my mind.

"Q. Was the conversation you had with Mr. Duss in German?
"A. Yes, sir."

The memorandum of this testimony which Stickel promised to produce he never did produce.

The first conversation (Record, vol. II, pp. 533, 534) was while they were talking about the financial affairs of the society, and its debts, and Stickel was so particular that he noted the conversation down as October 20th, between nine and ten o'clock.

The second conversation (Record, vol. II, p. 534), was in Duss' house, after the signing of the power of attorney to execute the mortgage, and there Stickel testifies as follows:

> "A. Well, we hadn't much conversation; but just after it was signed Mr. Duss said we couldn't exist that way as we were now, because we were too much in debt, and the best thing would be to wind up the whole thing—if we could make some debts, why the mortgage money can be divided and everybody get something out of it.
> "Q. Was that all that was said?
> "A. Well, I don't remember much more about it.
> "Q. In that second conversation was there anything said about the affairs of the society?
> "A. Yes, sir.
> "Mr. Watson—About what?
> "Mr. Schoyer—About the financial affairs of the society?
> "Q. Was there anything said about why the mortgage was given?
> "A. The reason was so that the sheriff couldn't come in and sell everything, because Mr. Duss said to me in two or three days or so the sheriff could come and sell off everything and we couldn't get nothing.
> "Q. Was there anything in that conversation said in regard to the plan that Duss mentioned in the first conversation that he had in Nebraska?
> "A. Well, that was said that he can bring out his plan in such a way, when he gives the mortgage."

The third conversation was to the time that unfit food, as Stickel calls it, was given him, and that was as follows (Record, vol. II, p. 535):

> "A. Yes; I remember once, when I became kind of unfit food, kind of stinking bologna, pudding; and I brought it to Mr. Duss, and we had a talk about it, and I said, 'I am tired of staying here, with such a kind of food, and always fighting.' I said: 'It would be better to give each one a present and to pay off and get right of this fight.' And Mr. Duss said, 'Well, I guess I will do that,' or 'I want to do that,' or something of that kind, to do what I had said."

Mr. Duss' reply to these will be found, Record, vol. II, pp. 871, 872. He says that the conversation between him and Stickel was in reference to the financial condition of the society, and that it would take a large amount of brain work to save it, but that he never said anything at all about dividing the society.

Mr. Duss also remembers the second conversation, after the signing of the mortgage (Record, vol. II, p. 872), and testifies it was Stickel that suggested a division of the assets of the society, and not himself, and that he refused to consider it.

(The improbability of Stickel's story in the then financial condition of the society should not be overlooked.)

The third interview (Record, vol. II, p. 873,) was the morning of the day of the hearing in the Feucht bill, when Stickel made a demand for money, and said he would not put in any affidavit if such was given him, and Mr. Duss refused to make any terms with him.

See, also, Record, vol. II, pp. 873, 874.

TESTIMONY OF JOHN S. DUSS AS TO ALLEGED ADMISSIONS TO JULIUS STICKEL.

"Q. I call your attention to the testimony of Julius Stickel, on pages 404, 405 and 406 of the typewritten copy, in reference to Mr. Siber and his complaint to you about Mrs. Siber, and I ask you if you have any explanation of Stickel's complaint to you about Mrs. Siber, except that which you have already stated?

"A. I have nothing to add.

"Q. You have already given your explanation of it?

"A. Yes, sir.

"Q. I call your attention to Stickel's testimony, on page 417 of the typewritten copy, wherein Stickel testified that he had a conversation, while you were senior trustee, with reference to the winding up of the Economite Society, and that your conversation took place in Economy Garden, and Stickel says the following was the conversation: 'While we had a talk about the financial affairs of Economy, and I spoke to Mr. Duss about the debts of Economy and so on, and Mr. Duss said to me plainly that he broke his brain or his mind to divide the society when he used to live yet in Nebraska, and he thought to give advice to some of the members to make a few thousand dollars for him.' Q. For the advice? A. For the advice; but he said, 'Now I have it in my own hands, and I can do as it suits me.'" Is that true?

"A. It is not true.

"Q. Did you ever have any conversation with Stickel?

"A. Yes, sir.

"Q. State what it was.

"A. It is true that Stickle asked me whether I was troubled about the finances of the society, and I admitted to a certain extent that I was—to the extent that it would take a large amount of brain work to save it; but about my breaking my head or mind to break it up, I never said anything of the kind; neither has it ever entered my mind. What I said was exactly the opposite.

"Q. What was it?

"A. That I was breaking my head to save it.

"Q. He also says, on pages 418 and 419 of the type-written copy, that he had a conversation with you after the power of attorney was signed, and that it was in your house, and that you then said: 'Well, we had not much conversation; but just after it was signed Mr. Duss said we could not exist that way, as we were now, because we were too much in debt, and the best thing would be to wind up the whole thing. If we could make some debts, why the mortgage money could be divided, and everybody get something out of it.' Is that true?

"A. No, sir; not a word of it.

"Q. Do you remember of having any talk with him about that matter?

"A. I did.

"Q. Well, what was it?

"A. I remember about Stickel himself making some suggestion of that kind, and I said it would be out of the question; that we needed this money to pay the debts, and we could not possibly divide anything.

"Q. He also testified, on page 420, that in a conversation with you, as follows: 'Yes, I remember once, when I became kind of unfit food, kind of stinking bologna pudding, and I brought it to Mr. Duss, and we had a talk about it, and I said I am tired of staying here with such kind of food and always fighting, I said it would be better to give everyone a present, and pay off and get rid of this fighting; and Mr. Duss said, well, I guess I will do that, or I want to do that; or something of that kind to do.' Is that true?

"A. It is not true.

"Q. What was the conversation?

"A. When Stickel called on me I could not have anything to say; he was always blowing about how good he was, and how industrious he was, and how talented he was. He may have mentioned something about having a fight. He never had any fight with me; but about the division of the property, there is no truth in this statement. What I remember is this—I forgot it yesterday—he was another man that spoke about leaving the society before the hearing; and I think he met me at the depot one

morning, probably on the morning of the very day on which the hearing in the Feucht bill took place at Beaver, and wanted me to give him a certain amount of money, and he said he wouldn't put in any affidavit; and I said, no, I will make no such bargain.

"Q. I also call your attention to pages 512 and 513 of the type-written testimony, which is Stickle's statement and examination as to a conversation between you and he in the garden in Economy, when he says you talked about breaking your head to break up the society, and I ask you if you desire to make any other explanation than what you have already made in reference to that, as to what Stickel's said, do you?

"A. Yes, sir. This reminds me that he said he knew where there was plenty of gold; that there was a hidden treasure there in the store yard, and that a man from Rochester, who could feel the presence of gold or silver in his body when he came near it, had told him so. I said, all right; I wish you would find it. He came to me a day or two afterwards and stated that it was no use—that the spirits would remove it if it was taken out.

"Q. Have you any other explanation?

"A. I think it was years ago, in Nebraska, before my mother joined the society, when she spoke of that. I thought something over the final customs of the Harmony Society, the same as seems to have been done by quite a number, that the question, What should become of the great wealth? seems to have been thoroughly settled long before I came back to Economy; that the question now was, How to find enough wealth to keep it going?

"Q. I call your attention to Stickel's testimony, on page 315, in reference to Stickel's allegation that he had a fight with you, or you with him.

"A. He says that he had a fight with me; I had none with him; that was not the way of it, the way he states it. There was no fight whatsoever. The only matter which he could construe in that light was in regard to the expulsion of Feucht at the time we went there and knocked the locks off. Stickel came to me the same day and complained about this action. He didn't find any particular fault with anybody; but what he did say was that he deplored

that such a thing should occur in the society. He simply felt bad about it. I didn't say to him, 'Now, if you want to stick to Feucht you will find out how soon we can get rid of the whole business,' or anything of the kind.

"Q. You have already had your attention called to the complaints made to you by Stickel about drunkenness in the society, and also adultery?

"A. Yes, sir. Those questions I have gone over in detail. He complained to me about more persons than I testified to.

"Q. If he complained about anyone else, let us know.

"A. He complained of Hugo Miller at the sawmill making punch between times, and complaining that the sawmill men got more wine and cider than he did.

"Q. Do yon remember any person else that he complained about?

"A. About drunkenness?

"Q. That is what I am after.

"A. I think he complained about Blasius Platz, but not to me; that is, the complaint he made cropped out before the board that Stickel had charged him with drinking too much.

"Q. I call your attention to pages 425 and 426 of Stickel's testimony, where he gives a statement as to what took place between you and himself with reference to his leaving the society. I wish you would read that and tell me if that statement is correct, and, if it is not, tell me what is wrong with it.

"A. Mr. Stickel's recollection of this matter is not correct. I didn't use the expression in the sense that he used it; neither did Siver say that we would give him $3,500, based on the fact that it would amount to $1,000 for each year and $500 more to move. He did want $5,000. After some talk we induced him to be satisfied with $3,500 and this account of his father's, making $3,620 in all.

"Q. Stickel also, on page 474, gives a statement of a complaint that he said that he made to you about Stievalter; look at it and tell me what the facts are, as you recollect them.

"A. He didn't say he said this to me, Mr. Watson.

"Q. Yes, he does. If you look down at the bottom of page 474 you will find it.

"A. He did talk to me about Stievalter, and he did complain about the blacksmith shop, and we did suspend Stievalter on this complaint, in connection with other complaints.

"Q. I wish you would take and read pages 466, 467, 468, 469 and 470, being Stickel's roll of complaints, and as you go along make whatever additional statements you desire to in reference to Stickel's testimony.

"A. Mr. Stickel spoke to me several times during the years 1891 and 1892. He says—his main conversation was invariably about himself, his own wonderful talents, and his importance in the community.

This question is objected to.

Witness—Incidentally it would crop out, the comparison with him and the other members; how much better he was. He says here he talked to me because I didn't drink.

By Mr. Watson—Is that true?

"A. That is true.

"Q. I am not asking you to give us the details or his notions, but just the facts.

"A. He says he complained about Miller; that he received money from the saw mill; I don't think I have anything to add to that.

"Q. Did Stickel make other complaints?

"A. He said he made punch, or something the other men didn't have. I myself don't know what punch is. He says he spoke to him about Laubbee leaving his buggy outside of the village and not bringing it home. I didn't see it. He says that I said, when he spoke about Miller, that he ought not to get the He never said anything of the kind. What he says in reference to Laubbee, no such conversation ever took place.

By Mr. Shiras—What page is that?

"A. 469. He says that I said I had the power to give Laubbee nothing. I have no recollection of him saying that.

"Q. Here are two pages, 496 and 497; what complaint was that that he testified that he made to you. Have you any statement to give in reference to that?

"A. No, he didn't tell me that the girl told him that. He said it was common talk. That that which is enumerated in his testimony was true.

"Q. Is it true that you said to Stickel, when he was talking to you about Feucht: 'That you will find that you will get out of this if you stick to Feucht?'

"A. It is not true.

"Q. Did the board order Stickel to work?

"A. Yes, sir.

"Q. Did he refuse to work?

"A. Yes, sir; so the committee that was sent to order him to go to work reported.

"Q. How long was Stickel idle?

"A. Several months before he left the society.

"Q. I have already examined you in reference to the French Point House?

"A. Yes, sir.

"Q. I understood you to say that you had nothing to do with the erection of the house?

"Objected to.

"Q. What had you to do with the erection of the French Point House?

"A. Mr. Creese, the contractor that was erecting it, spoke to me about the kind of a heater that ought to be put in a house of that size, and the question was taken up by Henrici, myself and the contractor, and it was decided to put in a hot water heater, and Creese took me to Beaver Falls to show me how it worked. He had just put one in down there a short time before.

"Q. Is that all you had to do with the erection of the French Point House?

"A. Except that I said to Creese that I wanted the house built in such a way that it didn't look like a barn.

"Q. What was the house built for?

"A. A boarding house for saw mill and planing mill hands.

"Q. Mr. Duss. I call your attention to paragraph 14 of the bill, in which it is alleged that you formed a conspiracy to wreck and dismember the Harmony Society, and to obtain for yourself and those of your confederates the property of the society; is that true?

"A. That is not true.

"Q. It alleges that you directed; you having entire charge of the Board of Elders, directed that no new members were to be elected to the society under any circumstances; is that true?

"A. It is not true.

"Q. It also alleges that after you and Mrs. Duss had been elected no members have been admitted to the society?

"A. That is not true.

"Q. It further alleges that you arranged for the removal of several members of the society, to the end that you and your confederates might acquire the entire assets of the society; is that true?

"A. That is not true."

SECOND QUESTION.

From this examination of the testimony, it is plain that the

SECOND QUESTION

asked may, also, be answered like the first, in the *negative.*

The Harmony Society has not been dissolved, either by the consent of its members or by the abandonment of its purposes.

When we remember that the findings of the Master and the court below were exactly as we state them here, it will be seen that the position on the second question, as on the first, is impregnable.

TWELFTH ASSIGNMENT OF ERROR.

Here the appellants allege that the agreement of 1847, unquestioned in the society for a period of over fifty years,

> "destroyed the communism of the property and the patriarchial form of government provided in the agreements of 1805 and 1827, and substituted therefor a capitalistic system, assimilated to the forms usually adopted for the management of capital, and its employment for profit under the direction of a directory and presiding officers."

The argument made below, and probably here, will be that this was virtually the disrupting of the society. The appellants who make this argument asserted in their bill, and swore to the assertions, (see paragraph 8):

> "8th. That the Harmony Society from the period of its inception until a recent date, adhered rigidly to its plan of government and became illustrious and highly respected by reason of its sincere advocacy of the equality of man, its espousal of the highest principles of Christianity, and its honesty and benevolent administration of all public functions, whether in the management of its internal affairs or in its many transactions with the citizens of Western Pennsylvania."

Again, in paragraph 10th of the bill, these same appellants allege:

> "That during the year 1890, after a long period of prosperity and complete harmony in said society, began a second conspiracy."

The present position, evidenced by the above assignment, is entirely inconsistent and contradictory to and in conflict with the 8th and 10th paragraphs just cited of the bill.

The present allegations are made not by any person who was ever a member of the society, but by persons who claim lineally or collaterally to be the descendants of persons who died in or out of the society, in some cases, seventy years ago.

It is incredible that these outside people are entitled to criticise the agreements the members of the society saw fit to make.

The contract of 1847 merely changed the mode of government of the society from that of a single patriarch, as George Rapp was, to a Board of Elders, elected by the members.

The mode of holding the property of the society was merely changed from that of a single agent, George Rapp, to that of two trustees elected by the society, and whose powers were more exactly defined.

The 1847 agreement did not change at all the purposes for which the society was organized, or the contracts *inter sese* as to the rights of the members. It reaffirmed and adopted the agreements of 1827 and 1836, consider *ante*.

PUBLIC POLICY.

The Twenty-fourth Assignment of Error.

According to this assignment, the scheme of the association, as disclosed by its agreements and its prevailing customs and methods, is against public policy, and, therefore, should be stricken down. It is supposed that the practice of celibacy, though not a part of the written agreements of the parties is the custom attached.

Yet this is the same Harmony Society, which as averred in the Eighth paragraph in the bill, had become

> "illustrious and highly respected by reason of its sincere advocacy of the equality of man, its espousal of the highest principles of Christianity, and its honesty and benevolent administration of all public functions, whether in the management of its internal affairs or in its many transactions with the citizens of Western Pennsylvania."

The validity of such contracts as those of the Harmony Society has been passed upon, as we show in the cases heretofore cited, by the Supreme Court of the United States and the courts of last resort of Massachusetts, Maine, New York, Pennsylvania and Ohio, and, also, by the Circuit Court of the United States. In every instance such agreements have been held to be valid and binding, with nothing in them which was contrary to public policy or in conflict with any of the established customs and usages of the people among whom these communities were located.

Schriber vs. Rapp, 5 *Watts*, 351.

This case arose under the agreement of 1827, and distinctly declared its legality.

Nachtrieb vs. Harmony Society, 3 *Wallace, Jr.*, 66, Circuit Court of the United States decision by Grier and Irwin, justices, on the Harmony Society agreements.

See the same case reported as Baker et al. vs Nachtrieb, 19 *Howard*, 126, in the Supreme Court of the United States.

SEE, ALSO,

the manuscript of Judge Irwin's decision in the case of Lemmix vs. Harmony Society, No. 2, November term, 1852, in equity, in the Circuit Court of the United States for the Western District of Pennsylvania.

SEE, ALSO,

on the Harmony Society agreements the Supreme Court of the United States in the case of Speidel vs. Henrici, 120 *U. S. Reports*, 377.

SEE, ALSO,

Goesele vs. Bimeler et al., 14 *Howard*, 590, where the Supreme Court of the United States considered the agreements on which the Separatist Society of Zoar, Ohio, was founded, which agreements, in many respects, resemble the Harmony Society.

SEE, ALSO,

Burt vs. Oneida Community, 137 *New York Reports*, 346, decided by the Court of Appeals of New York, on agreements which are in substantial conformity with those of the Harmony Society.

SEE, ALSO,

Waite vs. Merrill et al., 4 *Maine*, 90, a decision of the Supreme Court of Maine on the agreements under which the Shaker Society was organized, which agreements, in many respects, resemble those of the Harmony Society, and in which the argument against celibacy was pressed by the counsel for the plaintiff.

SEE, ALSO,

Gasely *et al.* vs. The Separatist Society of Zoar, 13 *Ohio State Reports*, 145.

SEE, ALSO,

Grosvenor vs. United Society of Believers, 118 *Mass.*, 78, concerning the Shaker agreements, which resemble, in many respects, the Harmony Society.

It will be noted that, in the Shaker agreements, and especially, as to the one considered by the highest court in Maine, the doctrine of celibacy was enforced, and was part of the contract, while, in no portion of any one of the agreements in the Harmony Society, is that mentioned.

Even assuming, however, that it is a tenet of the society, it would be a curious result for a court in a Christian land, where Christianity is said to be part of the common law, for that reason to strike down the society which believes in that peculiar doctrine.

Religious history, the words of the Divine Master himself, the preachings of Paul and the other Apostles, extol the doctrine of celibacy, and ever since the Resurrection, in Christian poetry and literature, the saints and the martyrs of the Church have, with one accord, allotted the highest place in

the religious world to those whose lives were in accord with that faith.

Hundreds of orders in the Roman Catholic Church, many in the English Episcopal Church, and some in other churches, enforce the celibacy of their members, and, especially, of the priesthood.

There cannot be found a single case in the history of the English common law or English Chancery, where this tenet, even if faithfully kept and practiced, has been held to be in conflict with the policy of the nation or of the state.

COSTS.

The decree in the Circuit Court dismissed the bill at the costs of the plaintiffs, although a vigorous appeal was made by their counsel to prevent, at least, that portion of the decree.

Judge Acheson said (page 359, vol. I, of the Record):

> "The general rule in equity that costs follow the decree, we think, should be applied here under the circumstances. Swetzel et al. vs. Penn Bank, 147 *Pa.*, 154."

The bill alleges gross fraud and immorality.

These charges were fully met and overcome, and there is no good reason apparent which would relieve the plaintiffs from the costs their own false charges incurred.

APPENDIX.

AGREEMENT OF 1805.

Be it hereby known to all who need to know it that the following agreement has this day been made and concluded between us, the subscribers of the one part, and George Rapp and his associates of the other part:

ARTICLE 1. We the subscribers, on our part and on the part of our heirs and descendants, deliver up, renounce and remit all our estate and property consisting of cash, land and chattels, or whatever it may be, to George Rapp and his associates, in Harmony, Butler county, Pennsylvania, as a free gift or donation, for the benefit and use of the community there, and bind ourselves on our part, as well as on the part of our heirs and descendants, to make free renunciation thereof, and to leave the same at the disposal of the superintendents of the community, as if we never had nor possessed it.

ARTICLE 2. We do pledge ourselves jointly and severally to submit to the laws and regulations of the community, and to show due and ready obedience toward those who are appointed and chosen by the community as superintendents in such a manner that not only we ourselves endeavor, by the labor of our hands, to promote the good and interest of the community, but also to hold our children and families to do the same.

ARTICLE 3. If, contrary to our expectation, the case should happen, and we jointly or severally could not stand to it in the community, and we would within a few or more years break our promises and withdraw from the community, for whatever cause it may be, never to demand any reward, either for ourselves or children or those belonging to us, for any of our labors or services rendered, but whatever we jointly and severally shall or may do, we will have all done as a voluntary service for our brethren.

In consideration whereof George Rapp and his associates adopt the subscribers jointly and severally as members of the community, whereby each of them obtains the privilege to be present at each religious meeting; not only they themselves, but also their children and families, shall and will receive the same necessary instructions in church and school which is needful and requisite for their temporal good and welfare as well as eternal felicity.

ARTICLE 4. George Rapp and his associates promise to supply the subscribers jointly and severally with all the necessaries of life, as lodging, meat, drink and clothing, etc., and not only during their healthful days, but also when one or more of them become sick or otherwise unfit for labor, they shall have and enjoy the same support and maintenance as before; and if, after a short or long period, the father or mother of a family should die, or be otherwise departed from the community and leave a family behind, they shall not be left widows or orphans, but partake of the same rights and maintenance as long as they live or remain in the community, as well in sick as healthful days, the same as before, or as circumstances or necessity may require.

ARTICLE 5. And if the case should happen as stated above, that one or more of the subscribers, after a short or a long period, should break their promise and could or would not submit to the laws and regulations of the church or community, and for that or any other cause would leave Harmony, George Rapp and his associates promise to refund him or them the value of his or their property brought in, without interest, in one, two or three annual installments, as the sum may be, large or small; and if one or more of them were poor and brought nothing in the community, they shall, provided they depart openly and orderly, receive a donation in money, according to his or their conduct while a member, or as he or their circumstances and necessities may require, which George Rapp and his associates shall determine at his or their departure.

In corfirmation whereof both parties have signed their names.

Done in Harmony, February 15, 1805.

AGREEMENT OF 1821.

Be it hereby known that to-day, (20th January, 1821), in the year of our Lord one thousand eight hundred and twenty-one, the present agreement, treaty and alliance was made and concluded between us, the following persons, to wit: N. N., &c., of the one part, and George Rapp and his associates of the other part.

After the aforesaid persons became sufficiently acquainted with the principles, rules and regulations of the community of George Rapp and his association, by virtue of their religious principles, they have, after long and mature reflection, out of their own free will, determined to join the community of George Rapp and his association, in Harmony, Posey County, State of Indiana; to that purpose the aforesaid persons bind themselves and promise solemnly by these presents, to comply with the ordinances, rules and regulations of the community, and render due obedience to the superintendents ordained by the community, and to perform as much as possible all occupations and labors to which they are ordered, and help to promote the benefit, happiness and prosperity of the community. And if the case should happen that the aforesaid persons, jointly or singly, after a short or long period of time, leave the community for any cause whatever, they hereby bind themselves, jointly and each for himself separately, never and in no case to bring any account, nor make any claim, either against the association or any individual member thereof, for their labor and services rendered; also, never to make any demand, ask or claim any other payment, under any name and description whatsoever, but will do and have done all things out of Christian love, for the good and benefit of the community, or else take it as a gift, if George Rapp and his association willingly give them something.

However, George Rapp and his association, in return adopt the aforesaid persons into their community, whereby they obtain prerogative to partake of all meetings for divine services by which they receive in church and school the neces-

sary instructions, requisite and needful for their temporal benefit, and happiness, and eternal felicity. George Rapp and his association bind themselves further to supply the aforesaid persons with all the wants and necessaries of life, to-wit: meat, drink and clothing &c., and indeed not only during their healthful days, but also if all or any of them get sick or otherwise infirm and unable to work, they shall, as long as they remain members of the community, receive and enjoy the same support as before, during their better days, or as their circumstances may require.

In confirmation of the presents we, both parties, have hereunto set our hands and seals. Done in Harmony, the day and year above stated.

AGREEMENT OF 1827.

Whereas, By the favor of Divine Providence, an association, or community, has been formed by George Rapp and many others, upon the basis of Christian fellowship, the principles of which being faithfully derived from the sacred scriptures, include the government of the patriarchal age, united to the community of property adopted in the days of the apostles, and wherein the single object sought is to approximate, so far as human imperfection may allow, to the fulfillment of the will of God, by the exercises of those affections, and the practice of those virtues, which are essential to the happiness of man in time and throughout eternity:

And whereas, It is necessary to the good order and well-being of said association that the condition of membership should be clearly understood, and that the rights, and privileges, and duties of every individual therein should be so defined as to prevent mistake or disappointment on the one hand, and contention or disagreement on the other.

Therefore, Be it known to all whom it may concern: That we, the undersigned, citizens of Beaver County, in the Com-

monwealth of Pennsylvania, do severally and distinctly, each for himself, covenant, grant, and agree to, and with the said George Rapp, and his associates, as follows, to wit:

ARTICLE 1. We, the undersigned, for ourselves, our heirs, executors and administrators, do hereby give, grant, and forever convey, to the said George Rapp and his associates, and their heirs and assigns, all our property, real, personal and mixed, whether it be lands and tenements, goods, and chattels, money or debts due to us, jointly or severally, in possession, or in remainder, or in revision, or in expectancy, whatsoever or wheresoever, without evasion, or qualification, or reserve, as a free gift or donation, for the benefit and use of the said association or community; and we do hereby bind ourselves, our heirs, executors and administrators, to all such other acts as may be necessary to vest a perfect title to the same in the said association, and to place the said property at the full disposal of the superintendents of the said community without delay.

ARTICLE 2. We do further covenant and agree to and with the said George Rapp, and his associates, that we will severally submit faithfully to the laws and regulations of the said community, and will at all times manifest a cheerful and ready obedience toward those who are or may be appointed as superintendents thereof, holding ourselves bound to promote the interests and welfare of the said community, not only by the labor of our own hands, but also by that of our children, or families and others who now are or hereafter may be under our control.

ARTICLE 3. If, contrary to our expectations, it should so happen that we could not render the faithful obedience aforesaid, and should be induced, from that or any other cause to withdraw from the said association, then and in such case, we do expressly covenant and agree to and with the said George Rapp, and his associates, that we will never claim or demand, either for ourselves, our children, or for any one belonging to us, directly or indirectly, any compensation, wages or reward whatever, for our or their labor or services rendered to the said community, or to any member thereof; but whatever we or our families jointly or severally shall or may do, all shall

be held and considered as a voluntary service for our brethren.

ARTICLE 4. In consideration of the premises, the said George Rapp, and his associates, do by these presents, adopt the undersigned, jointly and severally, as members of the said community, whereby each of them obtains the privilege of being present at every religious meeting, and of receiving, not only for themselves, but also for their children and families, all such instructions in church and school as may be reasonably required, both for their temporal good and for their eternal felicity.

ARTICLE 5. The said George Rapp, and his associates, further agree to supply the undersigned severally with all the necessaries of life, as clothing, meat, drink, lodging, etc., for themselves and their families; and this provision is not only limited to their days of health and strength, but when any of them shall become sick, infirm, or otherwise unfit for labor, together with such medicine, care and attendance and consolation as their situation may reasonably demand. And if at any time after they have become members of the association, the father or mother of a family should die or be otherwise separated from the community, and shall leave their family behind, such family shall not be left orphans or destitute, but shall partake of the same rights or maintenance as before, so long as they remain in the association, as well in sickness as in health, and to such extent as their circumstances may require.

ARTICLE 6. And if it should happen as above mentioned, that any of the undersigned should violate his or her agreement, and would or could not submit to the laws and regulations of the church or community, and for that or any other reason should withdraw from the association, then the said George Rapp, and his associates, agree to refund to him or them the value of all such property, without interest, as he or they may have brought into the community in compliance with the first article of this agreement, and the said value to be refunded in one, two or three annual installments, as the said George Rapp and his associates shall determine. And if the person or persons so withdrawing themselves were

poor, and brought nothing into the community, yet if they depart openly and regularly, they shall receive a donation in money, according to the length of their stay, and to their conduct, and to such an amount as their necessities may require, in the judgment of the superintendents of the association.

In witness whereof and in testimony that the undersigned have become members of the said community, upon the conditions aforesaid, they have hereunto severally and each for himself set their hands and seals, on the 9th day of March, in the year 1827.

In the presence of

JOHN HOPKINS
and
CHARLES S. VOLTZ.

AGREEMENT OF 1836.

WHEREAS, The Harmony Society, consisting of George Rapp and many others, now established in the town of Economy, in Beaver County, Pennsylvania, did, on the 9th of March, 1827, enter into certain articles of association, of which the 6th in number, is as follows, viz:

And if it would so happen as above mentioned, that any of the undersigned should violate his or their agreement, and would, or could not, submit to the laws and regulations of the church or community, and for that or any other cause should withdraw from the association, then the George Rapp and his associates agree to refund to him or them the value of all such property as he or they may have brought into the community, in compliance with the first article of this agreement, the said value to be refunded without interest, in one, two or three annual instalments, as the said George Rapp and his associates shall determine.

And if any person or persons so withdrawing themselves were poor, and brought nothing into the community, yet if they depart openly and regularly, they shall receive a dona-

tion in money, according to the length of their stay and to their conduct, and to such amount as their necessities may require in the judgment of the superintendents of the association.

AND WHEREAS, The provisions of the said 6th article, though assented to at the time, manifestly depart from the great principle of a community of goods and may tend to foster and perpetuate a feeling of inequality at variance with the true spirit and objects of the association :

AND WHEREAS, The principle of restoration of property, besides its pernicious tendency, is one which cannot now be enforced with uniformity and fairness, inasmuch as the members of the association, in the year 1818, under a solemn conviction of the truth of what is above recited, did destroy all record and memorial of the respective contributions up to that time:

AND WHEREAS, Continued happiness and prosperity of the association, a more intimate knowledge of each other, have removed from the minds of all members the least apprehension of injustice and bad faith:

NOW THEREFORE, Be it known by these presents, that the undersigned, with a view to carry out fully the great principles of our union, and in consideration of the benefits to be derived therefrom, do hereby solemnly enter into covenants, and agree with each other, as follows:

1st. The said 6th article is entirely annulled and made void, as if it had never existed; all others remain in full force as heretofore.

2nd. All the property of the society, real, personal and mixed, in law or equity, and howsoever, contributed or acquired shall be deemed, now and forever joint and indivisiable stock. Each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in land, goods, money or labor; and the same rule shall apply to all future contributions whatever they may be.

3rd. Should any individual withdraw from the society, or depart this life, neither he, in the one case nor his representatives in the other, shall be entitled to demand an account of

said contributions, whether in land, goods, money or labor, or to claim anything from the society as matter of right. But it shall be left altogether to the discretion of the superintendent, to decide whether any, and if any, what allowance shall be made to such member, or his representatives as a donation.

Invoking the blessing of God on this sacrifice of all narrow and selfish feelings to the true purposes of the association and to the advancement of our own permanent prosperity and happiness, we have signed the foregoing instrument, and affixed thereunto our respective seals, at Economy, this 31st day of October, 1836.

Signed and sealed in the presence of

CHARLES D. VOLTZ,
WILLIAM P. BAUM.
(Signed by 391 members.)
(Signed by plaintiff and others.)

AGREEMENT OF 1847.

WHEREAS, By the decree of God, the venerable Patriarch and much-beloved founder and leader of the Harmony Society, George Rapp, has departed this life, whereby its members are deprived of Christian fellowship and religious ministry, and of this superintendence in their temporal affairs, and whereas in consequence of this deeply afflicting dispensation it has become necessary to the good order and well-being of the association that some plan should be agreed upon to regulate its future affairs, promote its general welfare and preserve and maintain it upon its original basis.

THEREFORE, Be it known to all whom it may concern, that we, the undersigned surviving and remaining members of the Harmony Society, and constituting the same, do severally and distinctly each for himself covenant, grant and agree to and with all the others thereof, and with those who shall hereafter become members as follows: That is to say,

ARTICLE 1st. We do hereby solemnly recognize, re-establish and continue the articles of our association (the sixth section excepted) entered into at Economy on the 9th day of March, A. D. 1827, in the presence of John H. Hopkins and Charles L. Voltz and the supplement thereto, adopted at the same place on the 31st day of October, A. D. 1836, in the presence of Charles L. Voltz and William F. Baum, except so far as the same are affected by the death of the said George Rapp, or hereinafter altered or modified, and to this extent we declare the said articles to remain in full force.

ARTICLE 2nd. We hereby ordain and establish a Board of Elders, which shall consist of nine members of the Harmony Society and their successors, to be chosen as hereinafter provided: John Stahl, John Schnabel, Adam Nachtrieb, Matthew Scholle, Joseph Hoerule, John Eberle, Romelius L. Baker, John Henrici, Johnathan Lenz shall be the first board.

ARTICLE 3rd. The Board of Elders shall have and exercise the following powers, to-wit: 1st. To regulate and manage exclusively the internal temporal concerns of the Harmony Society; to appoint and remove superintendents in the several departments of industry; to make regulations and give orders in relation to their business operations, and generally to take care that members perform the duties assigned to them. 2nd. To determine all disputes and misunderstandings amongst the members of the society; to advise if necessary, reprove any member who may be in fault or found delinquent in his duty. 3rd. To admit new members into the society and to expel them therefrom. New members when admitted shall subscribe this agreement as the evidence of their membership, and of the rights acquired by, and the duties imposed upon them. 4th. To establish regulations for the maintenance and improvement of the morals of the society and for the instruction of its members. 5th. To appoint one or more of its members spiritual leaders and instructions with such authority in relation to church discipline as shall be conferred by the board. 6th. To remove from the Board of Elders and to declare his seat vacated, also to remove from office either or both of the trustees hereinafter appointed for the management of the ex-

ternal affairs and their successors in office. 7th. To fill all vacancies in the Board of Elders occasioned by the death, resignation or removal from office any of its members and their successors, and so as often as a vacancy shall occur, to fill all vacancies in the office of trustee, when either or both of the trustees or their successors shall die, resign his office, or be removed from the same, and so often as a vacancy shall occur. 8th. The concurrence of six members of the Board of Elders shall be deemed the act of the board and a legal exercise of any of the powers hereinbefore conferred on the said board. 9th. A record book shall be kept in which the Board of Elders shall enter all proceedings that they shall consider of sufficient importance to be preserved. In all controversies, judicial or otherwise, in which the society or any of its members may be a party, such record shall be full and absolute evidence of the facts and proceedings therein contained and the affirmation of any elder shall be competent evidence of the identity of the said record.

ARTICLE 4th. We do further ordain and establish a Board of Trustees for the exclusive management of the external business and affairs of the society, which board shall consist of two persons, who shall be members of the Board of Elders, and their successors who shall be appointed as hereinbefore provided. Romelius L. Baker and Jacob Henrici shall be the first Board of Trustees.

ARTICLE 6th. The said trustees shall jointly and severally have and exercise the powers following, to-wit: 1st. In their own names or that of either of them, or otherwise, to purchase and sell, deal, barter, exchange and traffic, make all contracts and bargains in the prosecution of the business, to invest the funds in stocks and other securities, and make transfers and assignments, to collect debts, receive and pay out moneys, settle claims, compromise disputes, institute legal proceedings, appoint and dismiss agents, clerks and attorneys in fact, and at law, and generally to transact all the external business affairs of the society. 2d. To make donations to seceding and excluded members and to the representatives of those who are deceased and for such benevolent and charitable purposes as they may deem prudent

and fit. 3d. The said trustees shall have power jointly to purchase real estate in their own names and also in their joint names to grant, bargain, sell and convey all or any of the lands and tenements now or hereafter owned by or belonging to the said society, and for this purpose to execute deeds of conveyance in fee simple or otherwise in their joint names, but the proceeds of all such sales shall be held in trust for the society. 4th. For the purpose of providing effectual and convenient remedy in law for all injuries to the property of the said society, real and personal, by trespass, ouster, detention, conversion or otherwise. The said trustees are hereby invested with the rights of possession, entry and action in their own names as fully and to all intents and purposes, as do and may exist in the said society, and to effectuate this object more completely and in consideration thereof, we grant and transfer to the said trustees all such title and interest in the said property as shall be necessary therefor. The proceeds of all suits to be brought shall be in trust for the society. 5th. The powers hereby vested in the said trustees shall extend to and embrace all the property of said society, real, personal or mixed, whether standing or held in the name of the late Frederick Rapp, the said George Rapp, or in any other name or form whatsoever.

ARTICLE 6th. It is hereby distinctly and absolutely declared and provided that all the property, real, personal and mixed, which now or hereafter shall be held or acquired by any trustee or trustees or person under them, is and shall be deemed the common property of said society, and each trustee now or hereafter appointed, hereby disclaims all personal interest in the present resources and future earnings of the society, other than that of a member thereof, according to the articles of the association hereby re-established and continued, and according to the present agreement.

IN WITNESS WHEREOF, We, the undersigned members of the Harmony Society, who constitute the said association, have, to these articles executed in English and in German, hereunto set our hands and seals at Economy, in Beaver County, this 12th day of August, A. D., 1847.

Read over to and signed and sealed by the several persons whose names are subscribed in the presence of us.

Signed by W. P. BAUM AND OTHERS.

Duly acknowledged.

Recorded in Beaver County, Pa., deed book 25, page 121, &c.

AGREEMENT OF 1890.

WHEREAS, After the death of George Rapp, the founder and leader of the Harmony Society, to wit: On the 12th day of August, A. D. 1847. All the then members of the said society, by articles and a compact in writing of that date, duly executed at Economy, in the county of Beaver, State of Pennsylvania, in the presence of William P. Baum, Francis LeGoulan and Andrew Bimber, and subsequently recorded in the office for recording deeds, in and for the county of Beaver, in Deed Book, vol. 25, page 121, &c., adopted and established a system and plan for the regulation and government of the society, the management of their internal temporal affairs, as also for the management and transaction of their external affairs, and business in and by which articles John Schnabel, Adam Nachtrieb, John Eberly, Matthew Schottle, Joseph Hoerhla, John Eberly, Romelius L. Baker, Jacob Henrici and Jonathan Lenz were appointed and constituted the first board of elders therein established; and Romelius L. Baker and Jacob Henrici, two members of the society and of the board of elders, aforesaid, were therein appointed and constituted the members of the board of trustees of said society, provided for and established, which board of elders as thus constituted, and their successors, duly appointed, under the authority and in the manner therein granted and provided, have managed the internal temporal affairs of the society as therein directed until the present time, the present board of elders being constituted and consisting of Jacob Henrici, Ernest Woelfel, Michael Stiab, Johannes Scheid, Moritz J. Fredericka, Gottlieb Laupp, J. Jacob Niclaus, Her-

man Fischern and John S. Duss; and Romelius L. Baker and Jacob Henrici, the trustees aforesaid, and their successors, were and by said articles authorized and empowered, jointly and severally in their own names, or that of either of them, to make all contracts, purchases and sell, invest the funds of the society, collect debts, receive and pay monies, compromise and settle claims and disputes, appoint and discharge attorneys in fact, and at law, institute and conduct legal proceedings and generally to manage and transact all the external business and affairs of the society, to make donations to withdrawing members and for charitable purposes, &c. Also jointly in their own names, to grant, bargain, sell and convey all or any of the lands, tenements and real estate then or thereafter owned or belonging to the society, and for this purpose to execute deeds of conveyance in fee simple or otherwise, in their joint names, &c., as by reference to said articles recorded as aforesaid will more fully appear.

And Whereas, Romelius L. Baker and Jacob Henrici accepted said trust, acted as trustees of said Harmony Society, managing and transacting their business and affairs under the authority aforesaid, until the death of the said Romelius L. Baker, on the 11th day of January, 1868, whereupon in pursuance of the authority conferred by and according to the terms and provisions of said articles recorded as aforesaid, Johnathan Lenz, a member of said society, and the board of elders, aforesaid, was duly appointed and constituted a member of the board of trustees, to fill the vacancy occasioned by the death of said Romelius L. Baker, and thereafter the external business and affairs thereof were managed and conducted and transacted by the said Jacob Henrici and Johnathan Lenz as trustees, the same being managed, conducted and transacted under and in accordance with the authority given and conferred by the articles aforesaid until the death of said Johnathan Lenz, on the 21st day of January, 1890, whereupon the board of elders, consisting of the members last hereinbefore named and mentioned as constituting said board, in pursuance of the authority and direction of the articles aforesaid, appointed and constituted Ernest Woelful (also a member of said society and of said board of elders) a trustee, to

fill the vacancy thus occasioned in the said board of trustees, and the said Jacob Henrici and Ernest Woelful have since that time conducted and transacted the business affairs of the society according to the terms and provisions of the articles aforesaid.

And Whereas, More than forty years have elapsed since the execution of the articles and compact aforesaid, adopting and establishing the system and plan for the regulation of the government of the internal affairs of the society, and the management, control and transaction of the external business and affairs thereof, and many changes have taken place in the membership of the society, most of the then members having since died, and others embracing part of the undersigned, having been admitted and become members thereof in accordance with the terms and provisions of said articles, all of the members of the board of elders, except said Jacob Henrici, designated and appointed in the said articles, having died, as also their successors in said board, and all of whom, as members of said board, managed the internal affairs of the society as above recited, and two of those who have been members of the board of trustees, and actively engaged in the management and transaction of the external business of the society under the authority of the articles aforesaid, either severally and in their own names as trustees, or jointly with the co-trustee, Jacob Henrici, still surviving and in their joint names as such trustees, making contracts, purchasing and selling personal property, investing, collecting, receiving and paying moneys of the society, settling claims, purchasing real estate, selling real estate of the society, executing and delivering deeds, assignments and transacting all the external business and affairs of the society have also died.

And Whereas, Said society, and the undersigned, the present members thereof, have received and enjoyed, and do now enjoy the benefits and advantages resulting from the management and regulation of the internal affairs thereof by the board of elders as aforesaid, as also the benefits and profit of the external business and affairs thereof, managed and transacted by those who constituted the board of trustees as

aforesaid, and it is deemed right and proper that we the undersigned surviving members of the society, who entered into the articles and compact aforesaid, and the others who have since become members as aforesaid, should recognize, approve and reaffirm said articles, and approve and confirm what has been done for and on behalf of the society, under and in pursuance thereof.

NOW THEREFORE, Be it known to whom it may concern, that we, the undersigned, the surviving and present members of the Harmony Society, at Economy, aforesaid, and all the present members of said society, do severally, and each for himself, covenant, grant and agree to and with the others, and each and all the other members aforesaid, and signers hereof and with those who shall hereafter become members as follows, that is to say:

1st. We do hereby solemnly recognize, approve, reaffirm and continue the articles of agreement and compact of our association entered into at Economy, on the 12th day of August, 1847, and recorded in the recorder's office of Beaver County, as set forth in the preamble hereto and declare the same to be in full force, as a whole and all parts thereof, including the agreements and compacts mentioned and designated in the first article thereof, as fully and to the same extent as said mentioned agreements were recognized and established by said first article.

2nd. We do hereby approve and confirm any and all acts, matters and things done and transacted by the Board of Elders of the Harmony Society, as the same was from time to time constituted, since the date of the articles aforesaid, establishing said Board, and we hereby ratify and confirm the appointment of the present Board of Elders, to wit: Jacob Henrici, Ernest Woelfel, Michael Staib, Johannes Scheid, Moritz Frederick, Gottfried Laupp, J. Jacob Niclaus, Herman Fishern and John S. Duss.

3d. We do also hereby approve, ratify and confirm all acts, matters and things done, transacted and performed by the Board of Trustees of the Harmony Society, constituted first, of Romelius L. Baker and Jacob Henrici, until January 11th, 1868; afterwards, and from that date until January 21st,

1890, of Jacob Henrici and Johnathan Lenz, and since the last mentioned date, of Jacob Henrici, Ernest Woelfel, hereby ratifying, confirming, holding, declaring as good and effectual in law and in equity, all acts, matters and things done, transacted and performed by each and all of the said trustees in the purchase and sale of personal property, and in the making of contracts, investment of funds, purchase, sale and transfer of stocks, bonds and other securities, loaning or borrowing money, collection and payment of monies, settlement or compromise of claims or disputes, in the institution and prosecution of legal proceedings, in the employment and discharge of attorneys in fact and at law, in the making of donations, in the purchase of real estate, and in the sale thereof, in the execution and delivery of deeds, conveyances, transfers and assignments, whether of and pertaining to real or personal estate, in the execution or delivery of notes or obligations of any kind, and generally all acts heretofore done by said trustees, in the conducting, managing and transacting of the business of the society, and whether done by said trustees or either of them, severally and in his own name as trustee, or jointly in the joint names of himself and his co-trustees.

4th. We do also hereby approve and confirm the acts of the Board of Elders in the appointment of Ernest Woelfel, as co-trustee with Jacob Henrici, and declare said Jacob Henrici and Ernest Woelfel, the present Board of Trustees, authorized and empowered to do, perform and transact any and all business of the society, and to the full extent of the powers and authorities mentioned and designated in and conferred on the Board of Trustees, in and by the articles hereinbefore mentioned, made and entered into August 12th, 1847, and recorded as aforesaid.

In witness whereof we have hereunto set our hands and seals this 30th day of April, A. D. 1890.

JACOB HENRICI,
ERNEST WOELFEL,
JOHN S. DUSS,
AND OTHERS.

Duly acknowledged.

EXHIBIT "G."

WHEREAS, The undersigned, being all the members of the Harmony Society, at Economy, Beaver County, State of Pennsylvania, deem it proper and desirable that there should be some suitable, proper and certain evidence of membership in said society, and that the rights and powers of the trustees of said society should be more clearly defined and understood;

NOW, THEREFORE, While we do hereby ratify and confirm the Articles of Agreement and compacts of our Association entered into at Economy on the 12th day of August, 1847, and those of April 30th, 1890, confirmatory of the former and ratifying the acts of the Boards of Elders and Boards of Trustees, both of which Articles of Agreement are recorded in the Recorder's office of Beaver County, and are hereby reaffirmed, we and each of us, present members of the said Harmony Society, do hereby state and declare that this declaration, agreement and grant of power is, and is to be taken and considered, as supplementary to the agreements, compacts and articles above mentioned, to-wit:

1st. The present members of this society and association are Jacob Henrici, John S. Duss, J. Jacob Niclaus, Moritz J. Fredericks, Gottfried Lauppe, Johannes Scheid, Franz Gillman, Hugo Miller, Conrad Hermansdoerfer, Julius Stickel, Edward Killerman, Henry Feucht, B. Feucht, Blasius Platz, Sigmund Stiefvater, Regina Lautenschlager, Christina Rall, Karoline Molt, Katharina Nagel, Elizabeth Beck, Lena Rall, Thirza Feucht, Rebecca Feucht, Margaret Feucht, Christine Hoerer, Susie C. Duss, Bertha Geratch, Pauline Stickel, Johanna Hermansdoerfer, Maria Diem, Dorothe Hoehr, Philipina L. Wolfangle, Gottlieb Reithmuller, Samuel Sieber and Elizabeth Sieber, and no other person or persons than those above named is a member thereof, and that for the future it is agreed that before any person can become a member of the Harmony Society, he or she shall sign or make his or her mark to his or her name on the roll of membership,

which shall always be kept in the record book of the society, which book was established by the aforesaid agreement of 1847, and is the same in which are entered copies of said articles above mentioned; and shall also sign a written agreement in said book binding himself or herself to the observance and performance of all and singular the declarations, stipulations and agreements of the members of the society as contained in the several written articles above mentioned and in these articles, and the book aforesaid containing said roll of membership shall be the sole and exclusive proof of membership in the society.

2nd. It is hereby declared and agreed that the present board of elders of said society are Jacob Henrici, John S. Duss, Johannes Scheid, Gottfried Lauppe, Moritz J. Fredericks, J. Jacob Niclaus, Conrad Hermansdoerfer, Hugo Miller and Gottleib Reithmuller; and the present board of trustees of said society are Jacob Henrici and John S. Duss. And we do hereby grant and assign to said trustees and their successors, and do hereby agree and declare that the legal title to any and all the property, real and personal, owned or possessed by said society, wherever the same is situated or found, is, and is to be taken and considered as fully vested in the said trustees, Jacob Henrici and John S. Duss, above named, and held by them in trust for the society, but with full and complete power and authority in said trustees, their survivors and successors, at such time or times as they may deem advisable, and for the best interests of the society to sell and dispose of the same, or any part or parcel of the same, and for this purpose to make assignments or bills of sale of said personal estate, and to execute and deliver deeds in fee simple, or for any less estate, for any or all said real estate thus sold. This declaration and power to apply to and embrace any and all lands wherever situated now or hereafter belonging to said Harmony Society, or held in trust for said society, the title to which may be, or stand, in the name of Frederick Rapp, or George Rapp, or of R. L. Baker and Jacob Henrici, trustees; Jacob Henrici and Jonathan Lenz, trustees; Jacob Henrici and Ernest Woelfel, trustees; Jacob Henrici and John S. Duss, trustees; or any or either of them

and their successors, and any board of trustees hereafter appointed.

3rd. To remove any possible doubt or misunderstanding as to their right and power in reference thereto, we hereby give and grant to said trustees, above named, Jacob Henrici and John S. Duss, and to either of them and their survivor and successors, full power, from time to time, and at such time as they or either of them may deem for the true interest of the society to borrow such sum or sums of money for such length of time, at such rates of interest and upon such other terms as the said trustees, or either of them, or their survivor or successors, may deem advisable; and jointly or severally to give notes, bills of exchange, bonds, due bills or other evidences of debt therefor, and to secure such loan or loans of money, bonds, notes, due bills or other evidences of debt by pledge or assignment of any stocks, bonds or other personal property of any kind now belonging, or that may hereafter belong to said society, and by mortgage or mortgages upon, or deeds of trust of, all or any part of the real estate and leaseholds of real property, which said society now own or possessess, or hereafter may own or possess, and for this purpose the said trustees, above named, or either of them, their survivor or successors, shall have full power and authority to make, execute and deliver any and all such instruments and conveyances as may, in their judgment, be reasonably necessary to enable them, or either of them, to carry the foregoing powers into full effect.

And in the execution of any instruments or conveyances in writing or otherwise that may be or so become reasonably necessary in the exercise or execution of any of the powers hereinbefore granted, either of said trustees, their survivor or successors may execute the same, and for that purpose may sign the joint names of said trustees, as in the following form: "Jacob Henrici and John S. Duss, Trustees," or "Henrici and Duss, Trustees," by (name of Trustee executing) "Trustee."

IN WITNESS WHEREOF, we have hereunto set our hands and seals this day of December, A. D. 1892.

Supplemental Brief.

AGREEMENT OF 1836.

QUESTIONS OF NATURE OF SOCIETY'S TITLE TO ITS PROPERTY.

PUBLIC POLICY.

MR. DUSS.

APPELLANTS' CHANGE OF BASE.

The appellants now, for the first time, claim that they rely *solely and only* upon the agreement of 1836 through and by means of which they can gain any portion of the common property.

Thus, upon page 65 of their brief, they say:

> "Upon this agreement the plaintiffs rely solely as vesting in the members of 1836 and those becoming members at subsequent dates, the reversion of property upon the dissolution from any cause of the Harmony Society."

Again, on page 71 of their brief, they say:

> "That each of the plaintiffs is an heir and legal representative of an ancestor dying in the society since 1836—such ancestor being by the agreement of 1836 an equal owner of said joint and indivisible stock."

Again, on page 74 of their brief, they say that the property of the society

> "must go to those who are equally interested, under the articles of 1836, in the joint and indivisible stock therein created, as donors of that fund to the trustees, to them who live and to the heirs and legal representatives of those who are dead." * * * "While, however, we do not base our right of inheritance upon any contributions of our ancestors to the society, prior to the articles of 1836, yet it is important to consider those articles in order to ascertain what the principles and purposes of the society were and continued to be till its dissolution; its form of government; the nature and character of trusts created, their duration, and the future disposition of the property controlled by said trusts."

The agreement of 1836 was primarily and chiefly intended to strike out the 6th article of the agreement of 1827, which provided for the return to the seceding member of the value of all his property brought into the society.

It, therefore,

(*a*)—Annulled the 6th article and made it void;

(*b*)—Enacted article 2 as follows:

> "All the property of the society, real, personal and mixed, in law or equity, and howsoever contributed or acquired, shall be deemed now and forever joint and indivisible stock. Each individual is to be considered to have finally and irrevocably parted with his contributions, whether in lands, goods, money or labor, and the same rule shall apply to all future contribution whatever there may be;"

(*c*)—Enacted article 3 as follows:

> "Should any individual withdraw from the society or depart this life, neither he, in the one case, nor his representatives, in the other, shall be entitled to demand an account of said contributions, whether in lands, goods, money or labor, or to claim anything from the society as matter of right. But it shall be left altogether to the discretion of the superintendent to decide whether any, and if any, what, allowance shall be made to such member, or his representative, as a donation."

No portion of the agreement of 1827 was changed except the 6th article, unless such change be introduced by articles second and third just cited.

We have already considered at length and analyzed the agreements of 1805 and 1827, (pages 25 to 44 of this brief), with the conclusion that each joining member of the society parted with all right, title and interest to his contributions

and to the present and future property of the society. He was merged into and became a member of the community. All the members constituting the society covenanted with each other that each was entitled to all the rights and privileges of a member as stipulated in the agreement of 1827, including schooling, clothing, food, etc., but each member, by the agreement of 1827, in its very words, (see pages 38, 39 and 40), stipulated that all the property was to be the property of the society, and that no one of the members was entitled, *individually*, to any part thereof but to the use of the same as a member of the society.

Surely if human language can plainly express a meaning, this agreement said that by death or retiring from the society

> "neither he, in the one case, nor his representatives, in the other, shall be entitled to demand an account of said contributions, whether in lands, goods, money or labor, or *to claim anything* from the society as matter of right. But it shall be left altogether to the discretion of the superintendent to decide whether any, and if any, what, allowance shall be made to such member, or his representatives, as a donation."

How is it possible for the appellants to derive a title through this agreement of 1836?

They now claim to represent:

(*a*) Persons who died in the society;

(*b*) Persons who left the society.

How can they, against the plain words of this agreement, claim to recover anything whatever?

Those words are:

> "Neither he in the one case *nor* his representatives in the other, shall be entitled to demand an account of said contributions whether in land, goods, money

> or labor, or to claim anything from the society as matter of right."

The argument of the appellants is that because in this agreement in article second it is said,

> "All the property of the society, real, personal and mixed, in law or equity and howsoever contributed or acquired, shall be deemed now and forever *joint and indivisible* stock,"

that this, in some way, gives them an interest in the property which they did not gain under the agreements of 1805, 1821 and 1827.

And they claim this, also, in the face of the above provisions and the other portions of this article, which says that

> "each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in lands, goods, money or labor, and the same rule shall apply to all future contributions, whatever they may be."

If each individual has forever parted, as this agreement says, with all his former contributions, whether they be represented by lands, or goods, or money, or labor, and that same rule shall apply as to all *future* contributions, how is it possible for his heirs or representatives to gain, after his death or withdrawal from the society, any title to this property?

The agreement does say that the entire property shall be considered as

> "joint and indivisible stock."

But how does this change the equitable title and right which the society always had to its property? Was it not always joint and indivisible? Did not all the covenants and all

the agreements provide that a party dying or leaving, lost all his right, title and interest in and to the common property except that, under the agreement of 1827, he might have returned to him the value of his contributions?

The agreement of 1836, saying that it shall be regarded as as joint and indivisible stock, in no way changed the title by which it was originally held under the agreements of 1805 and 1827, and the individual member and his heirs or representatives, after his death or withdrawal from the society, gain no other or greater right than they had under the agreements of 1805 and 1827.

Indeed, the language of the agreement of 1836 seems more specifically to bar out these plaintiffs than that of the other two agreements.

Nor should it be overlooked that, as the society changed in membership from 1805 down to this present date, the members constituting at any one time the society changed their agreements, bought and sold property, made donations, and acted as if they were—as, indeed, they were—the actual owners of all of its property. This was, as we have said before, a practical construction of the agreements which should now be of controlling influence.

Topliff vs. Topliff, 122 *U. S.*, 131.

APPELLANTS' POSITIONS AS TO THE NATURE OF THE TITLE BY WHICH THE SOCIETY HELD ITS PROPERTY.

The appellants admit that *prior* to 1836 no one of them contributed any property of any kind to the society, and the Master has found that no one of them did *since* 1836.

Now, if this be so, let us grant, for the sake of the argument, that the appellants are right on page 90 of their brief, i. e., that the society could not take any title at all to its property,—or that any trust created for it is void,—or that if the trusts are good, they violate the rule against perpetuities—or that the title is a base or conditional fee—how, in any one or all these contingencies, are the appellants benefited?

If the society has no title to its property, the appellants can claim none, for it is only through such society that it can reach the property.

If the trust created for the society is void, or if the trust is good but violates the rule against perpetuities, or if the title is merely a base or conditional fee, how is it possible for the appellants to benefit thereby?

No one of the appellants contributed any property whatever.

If the property reverts, it would be to the original grantors, and no one of the appellants is a grantor.

It seems extraordinary the efforts the appellants have made to attack the title of the Harmony Society and its trustees to

this property, for it is only through the society, as the *bona fide* owner of the property, that the appellants can recover at all. If they could succeed in demonstrating that the title was defeasible and not good, they would effectually, as the Master says, destroy their own case.

BRIEF REVIEW OF APPELLANTS' POSITION AS TO TITLE.

The appellants have as heretofore stated collected on pages 90 and 91 of their brief their different theories by which they seek to strike down the title of the Harmony Society to its property. We have heretofore answered—see index to our brief—as has the Master and the Court below—each one of these theories:

(I)—The title to the real estate was originally vested in fee simple in Frederick Rapp—then in George Rapp—and then in the Trustees Henrici and Baker and others as hereinbefore stated, the title to the personal property was also so vested.

(II) As we have seen the trust in favor of the society is not invalid.

(III) The trusts do not violate the rule against perpetuities. The right of the trustees, in whom is vested the absolute title at any time to sell all of the property, real and personal, freed and discharged of and from all trusts, is undoubted.

When the Rapps held as agents there could be no question, for this right clearly appears, not only by the original conveyance to each in fee simple, but also in his declaration of trust.

Record, vol. 3, page 619.

See as to George Rapp:

Record, vol. 3, page 613.

Article VI. of the Agreement of 1847, page 312 of this brief, gives the most ample power to sell and convey at any time to the trustees.

All the property of the society is freely alienable at any time. It is true that, as in the case of all trusts, the proceeds of the trust property is necessarily affected by the trust and becomes itself trust property, but this trust property is just as freely alienable as was the property by whose sale it arose. Its future sale is not tied up or prevented. There is no future estate sought to be created. The trustees and society together have both the legal and the equitable title and may freely sell or give away or otherwise dispose of all the property. At any time all the members of the society, with the trustees, could terminate the existence of the society and so forever terminate and end the trust. What would be done with the property it would be for the then members to say.

See on this very question Geosele vs. Bimler, 14 *Howard*, 590.

In Nachtrieb vs. the Harmony Society, 3 *Wallace, Jr.'s, Report*, 82, 84, 85, Judge Grier's opinion, holding expressly that the then members owned all the property, will be found.

Speidel vs. Henrici, *et al.*, 120 *U. S.*, 377.
Speidel vs. Henrici, *et al.*, 15 *Federal Reporter*, 758.

Judge McKennan's opinion is not printed in the Supreme Court Reports, but is in the *Federal Reporter* and from it we quote as follows:

> "The trust alleged here was instituted for the equal and exclusive benefit of the members of the Harmony Society. It was part of the religious as well as secular polity of the society. *Fellowship in the society was the only recognized title to participation in its benefits. When that fellowship ceased, from whatever cause, all further interest in the trust and all the privileges of membership were necessarily lost, and were denied.* From that time forth, the relations of the withdrawing member and the society, as to all the incidents of membership, were adverse. This was the attitude of the complainant and of the society towards each other. He adjured a tenet of its religious creed, and proposed to violate one of its fundamental rules. He was, therefore, compelled to leave it, *and thenceforth ceased to exercise any of the privileges or to enjoy any of the benefits of membership, but was, as to all these, placed in adverse relations with it.*"

(IV.) That the title is not a bass or conditional fee see *ante*, pages 67 to 73—and also pages 86 to 93.

NATURE OF THE TITLE THE TRUSTEES AND MEMBERS OF THE SOCIETY HAVE.

The original deeds for the property of the society were all made in fee simple to Frederick Rapp.

In no instance was there any trust or use declared on the face of the deed. The title was absolute and unqualified in Frederick Rapp.

Frederick Rapp, as we have stated, did declare that he held the property in trust for the society by a separate paper.

All the other conveyances to George Rapp, who succeeded Frederick Rapp as the agent, and then to the different trustees appointed under the agreement of 1847, gave an absolute title, in fee simple, and without any trust declared.

The title to all the real estate is conveyed to the trustees in fee simple. It is, in each instance, an absolute unqualified estate in fee, without limitation of any kind. It is not conveyed upon any condition of any kind. No one of the members of the Harmony Society ever conveyed, so far as this case shows, any real estate to the society, but, if any one did, it was just as absolute a conveyance, as shown by our analysis of the different agreements.

The grantors of all the real estate parted with all their title to the tracts of land conveyed. They were conveyed to the trustees and their heirs.

It is true that, beginning with the original declaration of Frederick Rapp, in 1834, (Record, vol. 4, p. 619), followed by George Rapp's appointment in 1834, (Record, vol. 4, p. 613), and this by the agreement of 1847, (see page 312, appendix to this brief), the agent and trustees in each instance declared that the property conveyed to them

> "is and shall be deemed the common property of said society."

The

> "*said* society"

as the agreements all show, were the persons who were in membership and constituted part of it.

McKennan, C. Judge, in the Speidel case, 15 *Fed. Rpts.*, 753, speaking of what this trust was, and for whom, said:

> "The trust alleged here was *instituted for the equal and exclusive benefit of the members of the Harmony Society.* It was part of the religious as well as secular policy of the society. *Fellowship in the society was the only recognized title to participation in its benefits. When that fellowship ceased, from whatever cause, all further interest in the trust and all the privileges of membership were necessarily lost and were denied.*"

Mr. Justice Gray, in the same case, said: (120 *U. S.*, 377.)

> "The trust on which Rapp and the defendants (the trustees) as his successors held the common fund of the Harmony Society is described, in one place in the bill, as for the members of said families, and the contributors of said fund, and for their common benefit, that is to say, as is clearly explained by what goes before, in trust for their common benfit *as a community*, living together *in the community*, working for the community, subject to the regulations of the community and supported by the community."

The Harmony Society, composed of those who at the time were its members, were the *cestui que trustents* of the trustees, in whom stood the absolute fee simple legal title to the property. Each one of these members, so long as, *and only so long as*, he was a member was one of the *cestui que trusteuts*. Whenever he ceased to be a member the *use* shifted from and left him, *because* the very foundation and condition of its existence were taken away. When one became a member of the society, the *use* for him sprang up and *shifted* so as to include him among the members. When he ceased to be a member the very agreement he signed, by which he became a member, terminated and ended the trust or use.

In 2 *Washburn on Real Property*, page 669 (fifth edition), title "Shifting Uses," he uses, as an illustration of them, as follows:

> "An example of a shifting use, as given by the courts, is a grant to incorporated proprietors of land on which it was intended to build a church, *habendum* to said proprietors, &c.; and to each and every person who may hereafter become the lawful owner and proprietor of a pew in said house to be built thereon by said proprietors, the use would legally shift to those who should thereafterwards become pew holders."

In the society's agreement of 1847, provision is made for the admission of future members by the Board of Elders. (See Article III., page 310, of this brief.)

Under the original agreements, always, by consent of all the members, new members could be admitted.

To the trustees, say a parcel of land is conveyed on April 1st, 1870; they hold the same in trust for the members of the society as such, so long as each continues to be a member. Each member was and is a *cestui que trust.* As a part of and a member in this society each had such a title as would enable him to compel the use of the real estate for the purposes of the society and the fulfillment of the covenants contained in the written agreements of all the members.

When a new member came in, a use *shifted* to or sprang up for him, and he became, so long as he was a member, one of the *cestui que trusts.*

When any one left the society and thereafter ceased to be a member of it, the use or trust he had shifted from him to his fellow-members of the society. As Judge McKennan says *ante* the trust was

> "for the equal and exclusive benefit of the members of the Harmony Society."

As Judge Gray, in the same case, said, *ante:*

> "in trust for their common benefit as a community, living together in the community."

See, also, *Kerr on Real Property*, vol. 2, sections 1662, 1663.

Quite an instructive case is that of Second Congregational Society vs. Waring et al., 24 *Pickering*, 304, which was again considered in the case of Packard vs. Ames, 16 *Gray's Reports*, 328.

The opinion in the latter case is short, and we quote it as follows:

> "Bigelow, C. J. The construction of the deed from Joseph S. Packard to Micha Packard and others, proprietors, was considered by this court in North Bridgewater Congregational Society vs. Waring, 24 *Pick.*, 304. It was there held that an estate in fee vested in the grantees to the use of the proprietors of pews therein designated, the use shifting to such as should thereafterward become pewholders. No intimation was there made that the conveyance was on a condition subsequent. Nor, on careful consideration of the terms of the grant, can we see any valid ground for holding that such is the true interpretation of the deed. There are no apt or proper words to create a condition; there is no clause of re-entry or forfeiture. The only words which bear any semblance of an intent to restrict the title conveyed by the deed are found in the habendum. These are merely that the grantees, the proprietors of pews, should hold the estate for the purpose of erecting and maintaining thereon a house for public worship. But we know of no authority by which a grant declared to be for a special purpose, without other words, can be held to be on a condition. On the contrary, it has always been held that such a grant does not convey a conditional es-

> tate, unless coupled with a clause for the payment of money or the doing of some act by the grantee, on which the grant is clearly made to depend. Without some such clause a grant for a specific purpose can be held at most only to create a trust, but not an estate on condition. *Co. Lit.*, 203a, 204a, 204b, 214b. *Shep. Touchst.*, 123, 124, 133; Cowper vs. Andrewes, *Hob.*, 41; Norfolk's Case, *Dyer*, 138b. Exceptions sustained."

The Supreme Court of Pennsylvania in Methodist Church vs. Old Columbia Co., 103 *Penna. St.*, 614, cites and approves this case.

ACTS OF LIQUIDATION.

On pages 168 and 169 it is claimed that it was the duty of Mr. Duss, as trustee, to repudiate the debts of the Economy Savings Bank. This bank had been organized by Henrici and Lentz, trustees, and, owing to the faith in their honesty and the reputation of the Harmony Society, thousands of people had invested, amounting in the aggregate to over one million dollars.

The trustees had the undoubted power under the Act of 1847 to organize and carry on the bank. Even if they had not, they had done so with the consent and approval of every member of the Harmony Society. There is not now, and there never has been, a member of the society who objected to the payment of those debts, and surely it does not lie in the mouth of the appellants, who never were members, to raise that question.

The depositors, when Mr. Duss took control, were about four thousand (4,000) persons. Imagine the wide spread devastation of a policy of repudiation!

PARTITION OF PROPERTY.

The payment to retiring members is said to have been a liquidation and the dissolution of the society.

As we have seen, the members who at the time constituted the society were the absolute owners, through themselves and their trustees, of all its property, and they might at any time

dispose of it. The idea that, because they gave to certain retiring members certain sums of money, THEREFORE, this was a dissolution of the society, is difficult to see. If the society owned the property they might do with it as they saw fit, and, no matter to whom or for what they gave their property, it was their own, to do with as they liked.

Besides the agreement of 1847 authorized the donation to retiring members.

See this question treated *ante* and also considered by the master and the court below.

THE UNION COMPANY.

Under the agreement of 1847 the trustees had the power to change realty into personalty, and personalty into realty.

For reasons explained by Mr. Brooks and Judge Hice it was deemed advisable to convey the title to the real estate to the Union Company, a corporation of the State of Pennsylvania, giving to the trustees of the Harmony Society all the capital stock except so much as would make eligible members of the Board of Directors, the stock loaned for this latter purpose being in the shape of certificates endorsed in blank and left with the Harmony Society.

The society after the conveyance owned the stock, *all of it*, and, therefore, owned all the assets of the Union Company. They did not convey to the Union Company as a part of the liquidation, and it in no way deprived the society of any portion of the property which theretofore the society had owned. It was a mere change in the mode in which the title was held.

See this also treated *ante* at length; and also by the master and the court below.

CELIBACY.

The claim of the appellants on page 83, being that Mr. Duss and his wife have abandoned celibacy, is wholly untrue.

They do live at the Great House, as did Father Rapp and his wife in his day, but there is absolutely no testimony that they live together as man and wife.

Henry Feucht testifies, page 463, vol. 2 of the Record, that he was born during the time that his father and mother were members of the Harmony Society and that in addition thereto his brother and sister were also born during that time.

Page 464.

> "Q. Was that during the time that your father and mother were members of the Harmony Society, that they had four children?
> "A. Yes, sir."

Yet it is now argued by appellants that celibacy was always a cardinal doctrine of the society.

VALUE OF THE PROPERTY OF THE HARMONY SOCIETY.

Without any evidence to prove it the appellants have placed enormous values on the land owned by the company as well as on its other property. It is difficult to say exactly

what the property is worth, but certainly it is within the bounds of reason to say, that if the debts of the society were paid the society would not be worth one-half of the amount the appellants allege, and, probably, not one-fourth of that amount.

ARE THE HARMONY SOCIETY AGREEMENTS AND THE MODE OF LIFE OF ITS MEMBERS CONTRARY TO PUBLIC POLICY.

The appellants allege in their brief (pages 87 to 90) that the agreements and mode of life of the society are against public policy, and they specify the following reasons:

That the jurisdiction of the patriarchy extends to municipal control in a manner antagonistic to the constitutional system of the State respecting communities.

That the civil rights of the individual are vested in the patriarch.

That there can be no individual wealth, and, therefore, no "individual contracting."

That the obligations of civil duty are controlled by the patriarch.

That the scheme involves a system of labor which would bring disastrous competition against free labor and is allied to slavery.

> "That the members are concreted into an individual designated as a community, and hence they are not equal before the law, nor are they free, nor does their situation at all bring them within the declarations which are the foundations of the government."

That if the scheme should be successful for a long period, the society would absorb vast amounts of property, and thus defeat the collateral inheritance tax and the law in reference to the distribution of the estates of descendants.

That a community of persons thus isolated and differentiated in all the functions of civil life is against the policy of the law;

That the law condemns celibacy and the non-intercourse of married persons;

That the law also condemns a community of goods, it is socialistic;

That the society could not be incorporated under the laws of Pennsylvania;

Under the agreements each individual had no assignable stock;

The society concentrates, in itself, the wealth which individual contributions and labor pour into its coffers;

And that for these, and many other reasons, the trust in favor of the society must be declared void.

THE ABOVE VIEW IS CONTRADICTORY OF THE AVERMENTS OF THE BILL,

Section 8th of that bill says:

> "That the Harmony Society, from the period of its inception until a recent date, adhered rigidly to its plan of government, *and became illustrious and highly respected by reason of its sincere advocacy of the equality of man, its espousal of the highest principles of Christianity, and its honesty and benevolent administration of all public functions*, whether in the management of its internal affairs or in its many transactions with the citizens of Western Pennsylvania."

AGREEMENTS AND MODE OF LIFE NOT CONTRARY TO PUBLIC POLICY.

Every man and woman in the United States may freely live and agree with each other to live the life that he or she prefers, provided that such mode of life is not prohibited by the Constitution or the laws enacted thereunder.

What portion of the Federal or State Constitution, or of the laws of the State of Pennsylvania, or of the United States, do the agreements of the Harmony Society contradict or its mode of life infringe?

In one aspect it may be regarded as analogous to a partnership; but what law forbids men and women forming a partnership with agreements similar to those of the Harmony Society?

What law forbids the practice of celibacy?

What law forbids a man or woman contracting to work for a partnership or work for a community for boarding, clothing, etc., when he or she so long as they remain in the community is a part owner of the wealth created by his or her work and the work of everyone else?

In what respect is the creation of a Board of Elders, giving them supreme authority as to the internal regulations of the society, contrary to any law? Somebody must be governors or rulers. Indeed, under the corporation laws of Pennsylvania and the limited partnership laws such management is committed to the Boards of Directors and Managers.

If the corporation law provided that a Board of Managers or a Board of Directors should remain in office for twenty years instead of one, how would that conflict with the laws of Pennsylvania or of the United States?

The Harmony Society agreements do not pretend to interfere with any of the laws of the State in reference to the State control of all the civil and political functions of life.

The town of Economy is located in a township called Economy, and it is, so far as the State laws are concerned, governed and controlled exactly as any other township in the State. Each individual member of the society has the same civil and political rights to vote for all Township, County, State and United States officers as any other citizen of Pennsylvania.

In what respect does the community of goods violate any constitutional provision?

All the property so communed is liable to the general laws of the State governing its acquisition, sale, descent, and distribution. It is subject to taxation for United States, State, County, and Township purposes.

The agreements of the Harmony Society do not, in any way, exempt a man from or take from a man any one of his civil or political duties or rights.

There is no limit as yet under our constitutions to the acquisition of wealth, and nature, working through general laws, has proved that the ideas of vast and practically unbounded wealth to be gained by a society of this kind are false. The wealth of the Harmony Society, as the testimony shows, has been grossly over-estimated, and, to-day, is not one-half of the value of $3,000,000, put upon it by appellants.

Neither the Shakers, Separatists, Zoarites, Society of Believers, Oneida Community, or the Economy Society, have made such a brilliant worldly success, especially in America,

as would constitute a menace, by the acquisition of vast wealth, to the polity of the State of Pennsylvania or of the United States.

Certainly, the Harmony Society has been a great blessing to Western Pennsylvania. It has built up industries, built railroads, cut down and marketed forests, laid off farms, built towns, and, in various ways, added to the progress, development and civilization of our people.

Each member of the society, while he remained a member, had an interest, as a use or a trust, in the property, and he, undoubtedly, could have called his fellow members and his trustees to an account if they violated the good faith pledged to him by the articles of agreements creating the constitution of the society.

The appellants have not cited a single case sustaining their position that these agreements are against public policy, but, on the contrary, as we have seen (pages 221 to 224 of this brief), the Supreme Courts of Pennsylvania, Massachusetts, Maine, New York and Ohio, the Supreme Court of the United States, and the Circuit Court of the United States, have all affirmed the validity of the Harmony Society agreements and agreements framed similar thereto.

CHARGES AGAINST MR. DUSS.

The charges in the bill of complaint against Mr. Duss individually are many and severe.

If the court will read paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26 of the bill it will find a collection of charges, *each and every one* of which the master has found to be false, and the court below has affirmed the finding of the master.

With a maliciousness suggested by personal hatred, the plaintiffs have been induced to insert in the bill these outrageous charges against Mr. Duss, and they, when called upon the stand, each and every one of them, admitted that they had not any personal knowledge as to the truth of any one of these charges.

The charges contained, among other things, an averment (paragraph 12 of the bill), that Duss was the friend and confederate of Dr. Cyrus Teed, who was a notorious libertine and presided over an institution in Chicago filled with depraved women, whom he called his angels, and he was designated as the "Messiah," and then the averment is:

> "From the entrance of said Duss into the Harmony Society it had been his design to admit the said Teed and his entire collection of notorious men and women into the Harmony Society, thereby converting this old and religious celibate society into one closely allied with the free love doctrines of the Oneida and Mormon communities."

There was not a single word of testimony to justify this charge.

Not a *single* word.

The master and the court below found it utterly untrue.

But more horrible still, the bill charged Duss (paragraph 24) to be

> "a man of bad moral character, and is as such utterly unfitted to act as the Scriptural Adviser and head of a religious society; that the said Duss, in addition to holding so-called religious views utterly at variance with the creed of said society, has been guilty of gravest duplicity with his cousin, Fredericka R. Kroll, a young girl of some eighteen years of age, formerly a member of his household, in secretly taking her to the Teed residence in Chicago, where she is continually surrounded by the depraved and wanton women who compose the majority of Teed's so-called 'Angels.'"

The witness offered to support this charge was a defeated suitor against the Harmony Society. His evidence was plainly false upon its face, and he subsequently appeared before the master and admitted, and stuck to his admissions under the closest cross-examination, that the entire charge which he swore to was false, and he had been guilty of the most barefaced perjury.

His testimony had in addition been overwhelmingly met by that of numerous witnesses called by defendants, (see pages 166 to 170 of this brief.) Miss Kroll and Mr. Duss both denied it *in toto.* The circumstantial evidence demonstrated its falsity. The master found against the allegations of the bill, and the court below was so impressed with the falseness of this unsupported charge, that it went out of its way and said, after disposing of the case on other grounds, as follows, (see page 359, vol. I of the Record):

> "*And now before closing we deem it to be our duty to declare that after the most careful scrutiny of the evidence it is our judgment that the charges of im-*

morality made against John S. Duss, the senior trustee, in the twenty-fourth paragraph of the bill, are not sustained by the evidence, but are disproved."

Equally baseless are the charges against Mr. Duss that he has conspired to dissolve the Harmony Society and appropriate its property to himself and his confederates.

A brief history of Mr. Duss' connection with the society is as follows:

For many years his mother had lived in Economy, and she finally joined in 1887, at Mr. Henrici's request, the society. Mr. Duss lived, when a boy, for some time at Economy, left there and went to Mt. Union college, and afterwards went west and married and engaged in one or more occupations for his support. Jacob Henrici, the senior trustee, wrote for him to come back to Economy, and, in accordance with this letter, Mr. Duss returned with Mrs. Duss with her two children in 1889. The society appointed him as school teacher, and soon afterwards, at Mr. Henrici's and Mr. Lentz's request, he and subsequently his wife joined the society. Vacancies occurred in the Board of Elders and in the Board of Trustees, and Mr. Duss was elected to both, being chosen junior trustee on July 29th, 1890. Prior to this, the external business of the society had been controlled by Father Henrici and Mr. Lentz. They, however, kept no books, and there was absolutely no record in the society to prove what property the society had or what the society owed. Father Henrici (as his statement published, Record, vol. 3, pages 583 to 597, will show) had peculiar notions in reference to the manner in which the property of the society should be used, and the result was that he had, prior to July,

1890, dissipated much of the property of the society, and had involved it very largely in debt.

With the creation of these debts Mr. Duss had absolutely nothing to do, but, during the first year of his trusteeship, he became more and more suspicious as to the financial condition of the society, and, after a most careful examination, he discovered, to his horror, that the society was in debt about $1,500,000. Much of this debt was represented by negotiable paper and held by the different banks, and a large part of it, aggregating nearly $1,000,000, was due to the depositors of the Economy Savings Bank, which was a private partnership between Henrici and Lentz, trustees, and Judge Hice and Mr. Reeves, and was authorized by powers of the trustees under the agreement of 1847, as see *ante*.

The cash assets of the society had been pledged with the outside banks and Mr. Duss faced the peril of almost immediate insolvency unless he could realize sufficient money to control the restless creditors.

In this dilemma, James Dickson, an expert accountant, was employed to open and keep a set of books, and to arrange for a system of keeping the accounts of the society, and Judge Hice and Mr. J. Twin Brooks, Second Vice-President of the Pennsylvania Company, were enlisted for assistance and consultation with Mr. Duss.

In December, 1892, all the members of the society signed a paper authorizing the trustees, Henrici and Duss, to give a mortgage on the property to borrow money, and, accordingly, a mortgage was given to Harry Darlington, trustee, and the society obtained $400,000.00, and this was subsequently followed by a mortgage, in February, 1893, for an additional $100,000.00, and this money, with other moneys obtained from the successful handling of the cash assets of the company, enabled Mr. Duss to pay off the entire debts of the society, to save the Economy Savings Bank from closing its

door, and to save for the members of the Harmony Society a large part of their landed estate, subject, however, to the $400,000.00 mortgage above mentioned.

While the society was in this greatest peril of its life, and while Mr. Duss, with the assistance of Judge Hice and Mr. Brooks, was making every effort to provide money to pay the depositors at the Economy Savings Bank, *Henry Feucht*, one of the members of the society, on February 10th, 1893, with several other members that he induced to join him, filed a bill in equity in the Common Pleas of Beaver County, making numerous charges against Duss, and asking for the appointment of a receiver and the dissolution and distribution of its property. This bill precipitated and caused a run on the Economy Savings Bank and very nearly neutralized and defeated the efforts that Duss had made to save, at least, a portion of the assets of the society.

The case came on for hearing in the Common Pleas of Beaver County, and, after a hearing, and on March 3rd, 1893, the court refused a motion for a preliminary injunction.

The Feucht family, the plaintiffs in the bill, and especially Henry Feucht, who had been the aspirant for the position on the Board of Elders and on the Board of Trustees which Duss subsequently obtained, caused such commotion and trouble in the society that it was concluded that it was better to have them retire, even if the donation which the trustees were authorized under the agreement of 1847 to give to any retiring member was large. The Feuchts did exact from the society in its then involved condition a large amount of money, but all the other plaintiffs in the Feucht bill, being Dorothea Hoehr, Regina Lautenschlager, Edward Kellerman and Christina Rall, remained with the society, alleging that they had been induced to sign the bill by misrepresentations.

The Feucht litigation, as the master found, and as the facts fully demonstrate, stirred up the members of the Harmony society and caused a number of them to withdraw.

It is not trne that any one of them withdrew at the instance or at the request of Mr. Duss. On the contrary, it is true that Mr. Duss endeavored to prevent a number of them leaving the society, and, especially, to prevent all of those who were valuable members.

He labored with Siber, Miller, Niclaus and Fredericks to stay, but one and all, frightened by the Feucht litigation and fearing the insolvency of the society, withdrew, and, upon their withdrawal, the donations, under the agreement of 1847, were fixed approximately at but little less than the amount paid the Feuchts.

The public press became full of discussion as to the financial condition of the Harmony Society, its large debt, and the internal commotions, and reported at length the litigation in Beaver County.

The result of it all was that Henry Feucht, seeing that Mr. Duss had, at last, succeeded in rescuing the society from insolvency, and with the most bitter and revengeful feelings against him, stirred up this new litigation, and, after the litigation began, was the star witness for the appellants throughout the case.

To him the testimony traces these scandalous charges against Mr. Duss, and it is not too much to say that his personal animosity towards Duss, and his revengeful feelings, because of Duss' success in the society, were the causes of this litigation. At least, if not the causes of this litigation, the causes of the bitter charges that were made in the bill.

THE MEMBERSHIP OF THE HARMONY SOCIETY, BY REASON OF THESE WITHDRAWALS AND DEATHS, HAS DWINDLED DOWN TO NINE PERSONS. NO NEW MEMBERS HAVE BEEN ADMITTED SINCE 1893.

Not a single person, since the Feucht litigation in 1893, has applied for admission to the society. That litigation, and the trouble resulting therefrom, and the present litigation threatening the very life and existence of the society, have been an absolute bar to any desirable and responsible people applying for admission to its fold.

It is true, perhaps, that the tramps that line the highways would even now, or at any time since 1893, have come into the society, but it is equally true that they would have been undeserving members and prejudicial to the best interests of the community.

The charges and insinuations that Mr. Duss is conspiring for his own survivorship in, and thus become the owner of, all the property of the society is as baseless as were the charges in the bill as to his moral character. He is a gentleman of firm and decided character, whose task in life, it seems, has been to stand up for the right as against the most unfounded charges and slanders, and even against perjury itself. He has stood manfully for the society and the interests of its aged members who, if Feucht and the others, including the appellants, had their way, would have been turned out to starve.

Mr. Duss joined in January, 1890. He became a member of the Board of Elders at the same time, and subsequently fifteen new members joined in 1890.

In 1892 three new members joined.

In 1893 one new member.

THE DISSOLUTION OF THE SOCIETY.

We have fully discussed *ante* the question of the dissolution of this society either by common consent of its members or by the abandonment of the principles for wh'ch it was organized.

The master treated this question at length, as did the court below, and, closely examined, it utterly fails to show the least sign of the dissolution of the Harmony society.

The bill said it was dissolved in two ways:

(1) By the common consent of its members; and,

(2) By the abandonment of the principles for which it was organized.

(1) Was it abandoned by common consent, as shown hereinbefore?

There is not a particle of evidence to support this.

On the contrary, the written agreements of 1890 and 1892 expressly assert to the contrary.

(2) Has it been dissolved by the abandonment of the principles for which it was organized?

The master and the court below so fully treat of this, and we have discussed it so in detail in the prior part of this book, that it is not deemed necessary to say a word upon it here except that, upon investigation, this charge will be found just as groundless as the other charges which we have been noticing.